

KENTUCKY ADMINISTRATIVE REGULATION**TITLE 805
CHAPTERS 2, 3, 5, 7, 8****CHAPTER 2
DIESEL EQUIPMENT****805 KAR 2:010. Underground coal mine usage.**

RELATES TO: KRS 352.050(1)

STATUTORY AUTHORITY: KRS 352.050(1), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to permit the use of diesel powered equipment in underground mines for the purpose of reducing the number of electrocutions and mine fires from electrical cables.

Section 1. General Requirements for the Use of Diesel Equipment.

(1) Only diesel equipment bearing approval plates of permissibility issued by the Federal Mining Enforcement and Safety Administration and approved for use by the Kentucky Department of Mines and Minerals will be allowed in underground coal mines of the State. No diesel powered machinery may be taken into any underground coal mine of the State of Kentucky without the written approval of the Commissioner of Mines and Minerals. The approval for use shall incorporate all the requirements of these administrative regulations. If at any time the commissioner determines that any condition or practice permitted under this approval may threaten the health or safety of the employees, he may impose additional requirements for the purpose of eliminating the condition or practice.

(2) If technical, scientific or engineering information is gained indicating that approved diesel machinery may be used in a manner which will afford workmen equal or greater protection than afforded by the provisions of these administrative regulations, the commissioner may approve the use of the machinery in the manner which provides equal or greater protection.

(3) Mining Enforcement and Safety Administration approval of the permissibility of mobile diesel powered transportation equipment (hereinafter referred to as diesel machine(s)) means only that the particular machine has met certain specific requirements of design and performance, but such approval does not guarantee that it is impossible to use a permissible machine in an unsafe manner. The manufacturer must develop equipment that will meet the particular requirements for approval, but it is the user's responsibility to see that the equipment is maintained in permissible condition and is used in a permissible manner. In addition to proper maintenance, the use of diesel machines underground involves certain other factors, such as ventilation, which are of equal importance in establishing safe operating conditions. It is absolutely essential to observe the requirements of these administrative regulations in operating and maintaining such machines to avoid impairing their permissible status and thus defeat the protective features that are necessary for their safe use.

(4) Engine adjustments shall be verified by the manufacturer as being correct before each permissible diesel machine is operated in a coal mine.

(5) Alteration in design, substitution of components or subassemblies, or changes in conditions of operating permissible diesel machines shall not be made without prior concurrence of the Kentucky Department of Mines and Minerals and the Mining Enforcement and Safety Administration. When such changes are permitted additional engine tests and adjustments shall be required as necessary to ensure the safe operation of the particular machine in a coal mine.

Section 2. Proper Ventilation to be Maintained for the Mines in Which Diesel Powered Equipment is Used.

(1) The use of diesel machines underground shall be restricted to haulageways and working places where positive (controlled flow) ventilation is maintained.

(2) The ventilating air in all mine workings where diesel machines are operated shall not contain combustible or other contaminating gases in such concentration that will affect combustion in the diesel engine by materially increasing production of toxic (poisonous) or other objectionable constituents in the engine exhaust.

(3) Each set of producing entries in which diesel powered equipment is used shall be placed on a separate split of air.

Section 3. In mines using diesel powered equipment the quantity of ventilating air must meet the following standards:

(1) In addition to the amount of air required by the Kentucky Mining Law, at least 6,000 cubic feet of air per minute shall be provided for each diesel unit used in a working section of a mine. The air measurement shall be taken in the last open entry crosscut. If these locations cannot be used due to pillaring, the measurements shall be taken at the intake and return of the section. The quantity of ventilating air shall be adequate to dilute the toxic and/or objectionable constituents of the engine exhaust so that the composition of the air in each haulageway and working place connected thereto will meet authoritative standards for safe healthful working environment.

(2) The minimum quantity of ventilating air that must be supplied for a permissible diesel machine in a given time shall conform to that shown on the approval plate attached to the particular machine.

(3) The quantity of ventilating air in mine workings where diesel machines are operated shall be measured once during each working shift and a record of each measurement shall be kept in a book provided for this purpose.

(4) No person shall incorporate any device in the exhaust system of a permissible diesel machine that has not been approved in the tests that determine the permissibility of the machine.

Section 4. Maintaining Proper Quality Air in Mines that Use Diesel Powered Equipment.

(1) The air supplied for ventilation where diesel machines are used in coal mines shall contain not less than twenty and five-tenths (20.5) percent, by volume, of oxygen (dry basis) and not more than one (1.00) percent, by volume, of methane.

(2) The ventilating air in working places where diesel machines are operated shall be sampled and analyzed chemically often enough to assure that the composition of the engine intake air conforms with requirements stated in subsection (1) of this section and that the concentrations of contaminants, such as carbon dioxide, carbon monoxide, and oxides of nitrogen, when added to the ventilating air by the diesel-engine exhaust shall meet authoritative standards for safe healthful working environment.

(3) Ventilation and machine-operating conditions shall maintain the composition of the air in the pertinent mine workings so that the tolerable limits stated in subsections (1) and (2) of this section will not be exceeded.

(4) Diesel-engine exhaust shall not contain black smoke.

(5) When the conditions of the quality of air stated in subsections (1), (2), and (3) of this section are not maintained, as determined by analysis or other observation operation of diesel machines shall be stopped until the requirements of air quality are complied with.

(6) Records shall be kept of all air analyses and of any changes(s) in ventilation or diesel engine adjustment resulting from the analyses.

Section 5. Maintenance of diesel machines to be maintained according to the following rules:

(1) The maintenance of diesel machines in permissible condition shall be delegated only to authorized, competent persons.

(2) Engine intake and exhaust systems shall be inspected visually at least once each working shift. Other diesel machine components shall be inspected in accordance with instructions of the manufacturer. Records shall be kept of the inspections.

(3) Maintenance, inspection and repair work shall be done in accordance with instructions of the manufacturer. Records shall be kept of maintenance, inspection and repair work.

Section 6. The Maintenance of the Engine-fuel-injection System.

(1) Injection values.

(a) Injection values shall be maintained in proper operating condition. Particular attention shall be given to preventing imperfect atomization or distribution of the fuel.

(b) Replacements of worn or broken injection valves shall be identical with those on the engine when the diesel machine was approved as permissible.

(2) Fuel pump.

(a) The engine fuel pump shall be sealed or locked to prevent tampering. The seal shall be broken only by an authorized competent person, when necessary to reset the fuel pump, after which the pump shall be resealed.

(b) Resetting of the stop limiting maximum fuel injection of the fuel pump shall be identical with the original setting provided by the manufacturer.

(c) Each shop or facility in which diesel engines are serviced shall be provided with equipment for properly measuring the quantity of fuel delivered by the fuel pump when operating at maximum fuel setting, or such adjustments shall be made only by a competent diesel service organization where such equipment is available.

(d) The fuel pump shall be set to deliver the maximum weight of fuel specified in the certifications provided by the Mining Enforcement and Safety Administration and the Kentucky Department of Mines and Minerals.

(e) When operating a diesel engine at altitudes exceeding 1,000 feet above sea level, the maximum quantity of fuel injected by the fuel pump shall be set in accordance with the liquid fuel rate-altitude table provided in the manufacturer's caution statement.

Section 7. The Procedures to Follow in Inspection and Maintenance of Engine-intake System.

(1) The engine-intake system including flame arrester(s), air cleaner, and all joints shall be inspected at intervals according to the manufacturer's general maintenance instructions.

(2) Inspection of the engine-intake system shall include tightness of all joints and cleanliness of flame-arrester surfaces.

(3) Periodic measurements shall be made of the vacuum in the engine-intake system to determine whether the air cleaner and flame arrester(s) require cleaning.

(4) The air cleaner of the engine-intake system shall be maintained in accordance with the manufacturer's instructions. The normal oil-filling level shall not be exceeded.

Section 8. When and How to Inspect and Maintain the Engine-exhaust System.

(1) The engine-exhaust system, including flame arrester(s), conditioner or cooling boxes, shutoff mechanism, water spray, and exhaust-dilution system shall be inspected at intervals according to the manufacturer's general maintenance instructions.

(2) Periodic measurements shall be made of the positive pressure in the engine-exhaust system to determine whether the exhaust flame arrester requires cleaning.

(3) The water supply for the exhaust-gas cooling system shall be replenished by an authorized person at the beginning of each working shift.

(4) When salts from the evaporation of water in the exhaust-gas cooling system are deposited on auxiliaries, such as cooling boxes, conditioners and other parts of the system, such auxiliaries shall be flushed with water and cleaned to remove the salt deposits, as well as soot filtered from the exhaust gas.

(5) Float valves shall be serviced at intervals according to the manufacturer's instructions to maintain them in good operating condition.

(6) Functioning of the fuel shutoff mechanism actuated by the exhaust-gas temperature, shall be tested at least once every three (3) months. This test shall be made in a safe place; not in active face workings of a coal mine.

(7) All heated surfaces of the diesel engine shall be inspected and cleaned at intervals frequent enough to ensure that such surfaces are kept free of combustible materials, such as coal dust, diesel fuel, lubricants, and rags or waste.

(8) The exhaust-gas dilution system shall be inspected and cleaned at intervals frequent enough to ensure safe dilution of the exhaust gas when it is discharged from the diesel engine.

(9) Whenever the diesel-engine exhaust is smoky or objectionable odors are emitted in the exhaust, the cause shall be investigated immediately and corrected in accordance with the manufacturer's instruction.

Section 9. The Use and Maintenance of Electrical Components of Diesel Equipment.

(1) Locks and seals. Electrical parts, such as battery boxes and headlights, shall be provided with locks and seals that are maintained where required to preserve the permissible status of a permissible diesel machine.

(2) Fastenings. Joints in motor casings, starting switch enclosures, headlights, and other parts that are subject to arcing during normal operation shall be fastened securely. All bolts, cap screws, and other means of joining parts of casings and enclosures shall be kept in their proper places and secured tightly.

(3) Wiring and conduit.

(a) Wiring insulation shall be maintained in good condition and when worn or abraded shall be replaced with well-insulated wiring.

(b) Rubber hose, steel pipe, and other types of conduit for wiring shall be supported firmly at each end and between ends when the lengths are such as to require additional support. Conduit and other means of protecting wiring shall be kept in place and maintained in condition equivalent to that provided by the manufacturer for the permissibility tests.

(4) Headlight and instrument lenses. Lenses forming part of the explosion-proof casings of headlights or enclosures of instruments shall be held securely in place. Cracked lenses shall be replaced immediately.

(5) Overload and short-circuit protection. Tampering with fuses, relays or other means supplied by the manufacturer for overload and short-circuit protection of wiring and electrical parts shall not be permitted, nor shall the use of substitutes that nullify such protection be permitted.

(6) Battery. Battery-cell tops shall be maintained free of electrolyte and other foreign material. Connections between battery cells shall be kept tight and free of corrosion.

Section 10. Fuel Usage in Diesel Powered Equipment.**(1) Specifications.**

(a) The fuel for diesel engines of machines approved for service in underground mines shall conform to the equipment manufacturer's specifications for viscosity, pour point, cetane number, carbon residue and water. The flash point shall be not less than 140 degrees Fahrenheit, and the sulphur contents shall not exceed five-tenths (0.5) percent by weight.

(b) Only distillate fuel shall be used in engines of permissible diesel-powered transportation equipment for underground mines.

(2) Storage and handling.

(a) Fuel taken underground shall be transported only in strong, tight metal containers that are provided with efficient closing devices.

(b) The quantity of fuel stored underground shall not exceed that required for twenty-four (24) hour operation of all diesel machines in use.

(c) Fuel taken underground and awaiting transfer to diesel machine fuel tanks shall be stored in a closed compartment, constructed of incombustible materials, and shall be kept in a well-ventilated location, the return air from which shall not pass through any active mine workings.

(d) The walls of a fuel-storage compartment shall form a liquid tight joint with the bottom of mine floor. Any opening in the fuel-storage compartment, such as a doorway, shall be provided with a sill high enough to form a catch-basin in the storage compartment to retain spilled fuel. The capacity of the catch-basin shall be large enough to hold the maximum quantity of fuel that is permitted to be stored underground.

(e) Diesel machine fuel tanks shall be filled only at the fuel-storage compartment. Fuel shall be transferred from the storage compartment to a machine fuel tank through flexible hose that is fitted with a self-closing valve.

(f) The fuel-handling system and the diesel machine shall be frame grounded when fuel is being transferred from the storage compartment to the machine fuel tank.

(g) The air vents on fuel-handling equipment shall be flameproof.

(h) When fuel is being transferred from the storage compartment to the machine fuel tank, the diesel engine shall be stopped.

(i) A supply of sand or other suitable incombustible material shall be available during the transfer of fuel from the storage compartment to the machine fuel tank for absorbing spilled fuel.

(j) All drain plugs in the fuel-handling system shall be threaded and sealed or locked in the closed position to prevent unintentional opening.

(k) Only trained authorized persons shall be permitted to handle fuel for diesel machines.

(l) In fuel-handling operations, precautions shall be observed to keep the fuel clean and free from contamination by foreign material, such as dirt, sediment and water.

(m) Fuel filters on diesel engines shall be cleaned regularly and repaired promptly as conditions require.

Section 11. Types of Fire Extinguishers Used and their Storage. Liquid carbon dioxide or pressurized dry-chemical fire extinguishers shall be installed at underground repair shops, machine barns, and fuel storage compartments.

Section 12. Maintenance of Underground Repair Shops and Machine-storage Barns.**(1) Ventilation.**

(a) Underground repair shops and diesel machine-storage barns shall be ventilated by a separate air split between the intake and return airways.

(b) When diesel machines are operated in underground repair shop or storage barn, or in the event of fire, arrangements shall be made to conduct the products of combustion therefrom directly to the return airway.

(2) Construction.

(a) Underground repair shops and machine-storage barns shall be lined with nonabsorbent, incombustible material. Doors to other means of closure shall be constructed of similar incombustible material.

(b) Floors of underground repair shops and machine-storage barns shall be impervious to oil and shall be so graded as to provide natural drainage to a sump or catch-basin to collect spilled oil.

(c) Spilled oil shall be cleaned up and removed from the sump or catch-basin promptly and stored in closed metal containers until disposed of on the surface.

(3) Repair operations. Welding or other operations that might create a fire hazard shall not be done unless precautions are observed to prevent inadvertent ignition of diesel fuel or lubricants.

(4) Miscellaneous. A supply of sand or other incombustible material shall be kept in underground repair shops and machine-storage barns to aid in firefighting and to absorb spilled diesel fuel or lubricants.

Section 13. General Conditions Governing the Operation of Diesel-powered Equipment in Underground Mines.

(1) The operation of diesel equipment in underground coal mines in Kentucky shall be under the supervision of a foreman holding a Kentucky Mine Foreman Certificate.

(2) Not more than two (2) diesel shuttle cars will be permitted to operate at the same time in a single air split. Provided, however, that the Commissioner of Mines and Minerals may if he determines that the safety or health of the employees will not be jeopardized, permit additional shuttle cars to be used.

(3) No diesel equipment will be permitted to operate in any section of a mine where room entries exceed 3,000 feet in depth.

(4) The engine of a shuttle car shall be shut down at all times when not in use (that is, it must not be allowed to idle more than absolutely necessary).

(5) If the engine exhaust becomes more noticeable than normal, the equipment shall be removed from the faces and shut down until the proper repairs can be made to correct this condition.

(6) All employees working in sections where diesel equipment is used shall be furnished with self-rescue respirators which they shall carry at all times while on duty in the mine.

(7) No person who works in close proximity to mobile diesel equipment throughout the shift shall be permitted to work more than a ten (10) hour continuous shift in any twenty-four (24) hours.

(8) Access to all company records such as maintenance, repairs, fuels, ventilation, etc., pertaining to the use of the underground diesel equipment shall be made available to representatives of the Kentucky Department of Mines and Minerals upon request. The mine operator shall keep and make available other pertinent records as prescribed by the Kentucky Department of Mines and Minerals.

(9) The operation of any diesel machine in any manner or under any condition that does not comply with the requirements of these administrative regulations shall be considered by the department as voiding its approval for underground use.

(10) Terminology used in these administrative regulations is consistent with that of KRS 351.010 and 352.010 unless the context requires otherwise.

[illegible]

CHAPTER 3 SURFACE MINING SAFETY STANDARDS

805 KAR 3:010. Definitions.

RELATES TO: KRS 351.010, 352.010

STATUTORY AUTHORITY: KRS Chapter 13A, 351.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes definitions of important terms used in the administrative regulation of the operation of surface coal and clay mines, which include strip and auger mining operations.

Section 1. Definitions.

- (1) "Accepted" means tested and approved for a specific purpose by a nationally recognized safety agency.
- (2) "Active workings" means any place in a coal or clay mine where miners are normally required to work or travel in the performance of their duties.
- (3) "American Table of Distances" means the current edition of "the American Table of Distances for Storage of Explosives" published by the Institute of Makers of Explosives.
- (4) "ANFO" means ammonium nitrate-fuel oil mixtures.
- (5) "Barricaded" means obstructed to restrict the passage of persons, vehicles or flying materials.
- (6) "Berm" means a pile or mound of material capable of restraining a vehicle; also a shelf, ledge, or material placed to contain loose slope material.
- (7) "Blasting agent" means a cap insensitive chemical composition or mixture consisting of fuel and oxidizer and no explosive ingredient but which can be made to detonate when initiated with a high strength explosive primer.
- (8) "Blasting area" means the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury.
- (9) "Blasting cap" means a detonator containing a charge of detonating compound, which is ignited by electric current or the spark of a fuse and used for detonating explosives.
- (10) "Blasting circuit" means electric circuits used to fire electric detonators or to ignite an igniter cord by means of an electric starter.
- (11) "Blasting switch" means a switch used to connect a power source to a blasting circuit.
- (12) "Box-type magazine" means a small, portable magazine used to store limited quantities of explosives or detonators for short periods of time in locations at the mine which are convenient to the blasting sites at which they will be used.
- (13) "Capped fuse" means a length of safety fuse to which a detonator has been attached.
- (14) "Capped primer" means a package or cartridge of explosives which is specifically designed to transmit detonation to other explosives and which contains a detonator.
- (15) "Combustible" means capable of being ignited and consumed by fire.
- (16) "Company official" means a member of the company supervisory or technical staff.
- (17) "Competent person" means a person having abilities that fully qualify him to perform the duty to which he is assigned.
- (18) "Detonating cord" or "detonating fuse" means a flexible cord containing a core of high explosive.
- (19) "Detonator" means a device containing a small detonating charge that is used for detonating an explosive, including but not limited to blasting caps, exploders, electric detonators, and delay electric blasting caps.
- (20) "Distribution box" means a portable apparatus with an enclosure through which an electric circuit is carried to one (1) or more cables from a single incoming feedline, each cable circuit being connected through individual overcurrent protective devices.
- (21) "Electric blasting cap" means a blasting cap designed for and capable of being initiated by means of an electric current.
- (22) "Electric grounding" means to connect with the ground to make the earth part of the circuit.
- (23) "Employee" means a person who works for wages or salary in the service of an employer.
- (24) "Employer" means a person or organization employing one (1) or more persons to work for wages or salary.
- (25) "Explosive" means any chemical compound, mixture or device the primary or common purpose of which is to function by explosion and include black powder, dynamite, nitroglycerine, fulminate, and ammonium nitrate when mixed with a hydrocarbon plus high explosive ingredients.
- (26) "Face or wall" means that part of any mine where excavating is progressing or was last done.

(27) "Flammable" means capable of being easily ignited and of burning rapidly as defined by the National Fire Protection Association.

(28) "Highway" means any public road or travelway used by the general public.

(29) "Ignited cord" means a fuse, cordlike in appearance, which burns progressively along its length with an external flame at the zone of burning, and is used for lighting a series of safety fuses in the desired sequence.

(30) "Inhabited building" means a building regularly occupied in whole or in part as a habitation for human beings or any church, schoolhouse, railroad station, store, factory, or other structure where people are accustomed to assembly, but does not include any building or structure occupied in connection with the manufacture, transportation, storage or use of explosives.

(31) "Magazine" means a storage place for explosives or detonators.

(32) "Major electrical installation" means an assemblage of stationary electrical equipment for the generation, transmission, distribution or conversion of electric power.

(33) "Misfire" means the complete or partial failure of a blasting charge to explode as planned.

(34) "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a deposit of useful materials or ores that are to be mined.

(35) "Primer" or "booster" means a package or cartridge of explosives which is designated specifically to transmit detonation to other explosives and which does not contain a detonator.

(36) "Qualified person" means, as the context requires:

(a) An individual deemed qualified by the commissioner and designated by the operator to make tests and examinations; and

(b) An individual deemed by the commissioner to be qualified by training, education, and experience to perform electrical work, to maintain electrical equipment and to conduct examinations and make tests of electrical equipment used at the mine for which he is assigned such responsibility.

(37) "Reverse-current protection" means a method or device used on direct-current circuits of equipment to prevent the flow of current in the reverse direction.

(38) "Roll protection" means a framework or safety canopy to protect the vehicle operator if equipment should overturn.

(39) "Safety can" means an approved container of not over five (5) gallons capacity having a spring-closing lid and spout cover.

(40) "Safety fuse" means a train of powder enclosed in cotton, jut yarn, and waterproofing compounds which burns at a uniform rate and used for firing a cap containing the detonating compound, which in turn sets off the explosive charge.

(41) "Safety switch" means a sectionalizing switch that also provides shunt protection in blasting circuits between the blasting switch and the shot area.

(42) "Scaling" means removal of insecure material from a face or highwall.

(43) "Secondary safety connection" means a second connection between a conveyance and rope, intended to prevent the conveyance from running away or falling in the event the primary connection fails.

(44) "Semiconductive hose" means hose having an electrical resistance of not less than 5,000 ohms per foot and not more than two (2) megohms for its total length, used in pneumatic placement of blasting agents in bore holes.

(45) "Sprung hole" means a blasting hole chambered or enlarged to take an increased charge of explosives.

(46) "Stemming" means the placing of material on top of any charge of explosives.

(47) "Stray current" means that portion of a total electric current that flows through paths other than the intended circuits.

(48) "Substantial construction" means construction of such strength, material and workmanship that the object will withstand all reasonable shock, wear, usage and deterioration to which it will normally be subjected.

(49) "Suitable" means that which fits and has the qualities or qualifications to normally meet a given purpose, occasion, condition, function, or circumstance.

(50) "Travelway" means a passage, walk or way regularly used and designated for person to go from one (1) place to another while at work.

(51) "Wet drilling" means the continuous application of water to the back or bottom of the drill holes while drilling.

(52) "Working place" means any place in or about a mine where work is being performed.

805 KAR 3:020. General standards.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 13A.100, 351.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes general operating safety standards controlling the operation of the Commonwealth's surface coal and clay mines, which include strip and auger mining operations.

Section 1. General Standards for Coal and Clay Mines.

(1) Each mine shall be under the supervision of a foreman certified under conditions set forth by the department. Where operations are so extensive that the foreman cannot personally visit all the mine workings, he/she shall employ certified assistants who shall be subject to the same requirements as the foreman.

(2) Each place of work shall be visited by a certified foreman or his/her assistant at the beginning of and at least once each shift and more frequently as necessary to ensure that work is being done in a safe manner.

(3) No employee shall be assigned, allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his/her safety unless he/she can communicate with others, can be heard or can be seen.

(4) When work is performed after dark, the areas of drilling, blasting, stripping, and loading shall be properly illuminated.

(5) A certified person shall be in charge at all times when the mine is in operation.

(6) Where telephone service is not available, emergency communications shall be provided to the nearest point of assistance.

(7) Arrangements shall be made in advance for obtaining emergency medical assistance and transportation for injured persons.

805 KAR 3:030. Ground control.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to establish safety standards governing ground control in the operation of the Commonwealth's surface type coal and clay mines which include strip and auger mining operations.

Section 1. Ground Control.

(1) Practices and standards acceptable to the commissioner for the safe control of surface mine walls, including the overall slope of the mine wall, shall be established and followed by the operator. Such standards shall be consistent with sound engineering, the nature of the ground and the seam mined, and the ensuring of safe working conditions according to the degree of slope. Mining methods shall be selected which will provide wall stability, including benching, if necessary, to obtain a safe overall slope.

(2) All loose and hazardous material shall be stripped for safe distance from the edge of the highwall.

(3) The width and height of benches shall be governed by the type of equipment to be used and the operation to be performed.

(4) Safe means of scaling walls shall be provided. Loose material or trees on exposed wall areas shall be removed before any other work is performed in the exposed wall area.

(5) Men shall not work under dangerous walls. Hazardous overhanging walls shall be taken down immediately and other unsafe ground conditions shall be corrected promptly, or the areas shall be barricaded or posted.

(6) When removing rock by hand, men shall approach loose rock and areas on walls to be scaled from above and shall scale from a safe location.

(7) The supervisor or a competent person designated by him shall examine working areas and faces of walls for unsafe conditions at least at the beginning of each shift, during the shift while men are working, and after blasting. Any unsafe condition found shall be corrected before any further work is performed at the immediate area or face at which the unsafe condition exists.

(8) Men shall examine their working places before starting work and frequently thereafter and any unsafe condition shall be reported immediately to the supervisor before any other work is performed.

(9) Large boulders requiring secondary blasting shall be in a safe location before they are drilled or broken.

(10) Men shall not be permitted to work between equipment and the mine wall where the equipment may hinder escape from falls or slides of the walls unless special safety precautions are taken in advance.

805 KAR 3:040. Fire prevention and control.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to establish safety standards governing fire prevention and control in the operation of the Commonwealth's surface type coal and clay mines which include strip and auger mining operations.

Section 1. Fire Prevention and Control.

- (1) No person shall smoke or use an open flame where flammable or combustible liquids or greases are stored or in areas or places where fire or explosion hazards exist.
- (2) Signs warning against smoking and open flames shall be posted so they can readily be seen in areas or places where fire or explosion hazards exist.
- (3) Areas surrounding flammable liquid storage tanks and electric substations and transformers shall be kept free from grass (dry), weeds, underbrush and other combustible materials for at least twenty-five (25) feet in all directions.
- (4) Fires used for warning purposes shall be enclosed to prevent persons from coming in contact with flame or coals which would ignite clothing. Oily or easily ignited clothing shall not be worn where ignition hazards are present.
- (5) Buildings or rooms in which oil, grease, flammable liquids, or similar flammable materials are stored shall be of fire-resistant construction and well ventilated. Provisions shall be made to control spilled flammable liquids.
- (6) Abandoned electrical circuits shall be deenergized and isolated so that they cannot become energized inadvertently. If no further use is intended, they shall be removed.
- (7) Combustible materials, grease, lubricants, or flammable liquids shall not be allowed to accumulate where they can create a fire hazard.
- (8) Materials, such as oily waste and rags, which are subject to spontaneous combustion shall be placed in tightly covered metal containers until disposed of properly.
- (9) When flammable solvents are used for cleaning, such solvents shall be transported in safety cans of not over five (5) gallon capacity. When used to clean parts, the containers used shall have tight-fitting covers. No cleaning may be done with flammable solvents near a possible source of ignition.
- (10) Oxygen cylinders shall not be stored near oil or grease.
- (11) Gauges and regulators used with oxygen or acetylene cylinders shall be kept clean and free of oil and grease.
- (12) Valves on oxygen and acetylene tanks shall be kept closed when they are not in use.
- (13) Battery-charging stations shall be located in well ventilated areas and in the clear of other equipment.
- (14) Internal combustion engines, except diesels, shall be shut off and stopped before being fueled.
- (15) Each mine shall have available, or be provided with, appropriate types of firefighting equipment adequate for the size of the mine.
- (16) Firefighting equipment shall be strategically located, readily accessible, plainly marked, properly maintained, and inspected periodically and records shall be kept of such inspections.
- (17) Fire extinguishers shall be:
 - (a) Adequate in number and size and of the appropriate type for each particular fire hazard involved.
 - (b) Replaced immediately with fully charged extinguishers of the same capability after any discharge is made from the extinguishers.
 - (c) Inspected at least every six (6) months, tested at least once each year, and maintained according to the manufacturer's recommendation. Each extinguisher shall bear a tag showing the date of inspection and testing and the initials or name of the person making the examination.
 - (d) Approved by Underwriter's Laboratories, Inc. or Factory Mutual Research Corporation.
- (18) Appropriate fire extinguishers shall be provided on self-propelled mobile equipment.
- (19) Fire extinguishers of the appropriate type and size shall be an integral part of portable cutting and welding equipment.
- (20) When welding or cutting near combustible materials, precautions shall be taken to ensure that smoldering metal or sparks do no result in fire.
- (21) Belt conveyors in locations where fire would create a hazard to personnel shall be provided with safety switches to stop the drive pulley automatically in the event the belt stalls or there is excessive slippage.

805 KAR 3:060. Drilling for blasting.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to establish safety standards controlling drilling for blasting in the operation of the Commonwealth's surface type coal and clay mines which include strip and auger mining operations.

Section 1. Drilling for Blasting.

- (1) Equipment shall be inspected each shift by a competent person designated by the operator. Equipment defects affecting safety shall be reported immediately.
- (2) Equipment defects affecting safety shall be corrected before the equipment is used.
- (3) The drilling area shall be inspected by a competent person designated by the operator for hazards before drilling operations are started.
- (4) Men shall not be on the mast while the drill is in operation.
- (5) Drill crews and others shall stay clear of augers or drill stems that are in motion. Persons shall not pass under a step over a moving stem or auger.
- (6) Receptacles or racks shall be provided for drill steel stored on drills.
- (7) Tools and other objects shall not be left loose on the mast or drill platform.
- (8) When a drill is being moved from one (1) drilling area to another, drill steel, tools and other equipment shall be secured and the mast placed in a safe position.
- (9) In the event of power failure, drill controls shall be placed in the neutral position until power is restored.
- (10) While in operation, drills shall be attended at all times.
- (11) Drill holes large enough to constitute a hazard shall be covered or guarded.
- (12) Men shall not drill from positions that hinder their access to the control levers, or from insecure footing or staging, or from atop equipment not designed for that purpose.
- (13) Bit wrenches or bit knockers shall be used to remove detachable bits from drill steel.
- (14) Starter steels shall be used when collaring holes with hand-held or feedleg drills.
- (15) Men shall not hold the drill steel while collaring holes, or rest their hands on the chuck or centralizer while drilling.
- (16) Air shall be turned off and bled from the hose before hand-held drills are moved from one (1) working area to another.

805 KAR 3:070. Loading, hauling and dumping.

RELATE TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to establish safety standards controlling loading, hauling and dumping in the operation of the Commonwealth's surface type coal and clay mines which include strip and auger mining operations.

Section 1. Loading, Hauling and Dumping.

- (1) Equipment shall be inspected each shift by a competent person designated by the operator. Equipment defects affecting safety shall be reported immediately.
- (2) Equipment defects affecting safety shall be corrected before the equipment is used.
- (3) Powered mobile equipment shall be provided with adequate brakes.
- (4) Powered mobile haulage equipment shall be provided with audible warning devices. Lights shall be provided on both ends when required.
- (5) Equipment operators shall be certain, by signal or other means that all persons are in the clear before starting or moving equipment.
- (6) When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting the conveyor. When the entire length of the conveyor is not visible from the starting switch, a positive audible warning system shall be installed and operated to warn persons that the conveyor will be started.
- (7) Trucks, shuttle cars, and front-end loaders shall be equipped with emergency brakes separate and independent of the regular braking system.

(8) Operators' cabs shall be constructed to permit operators to see without difficulty and should be reasonably comfortable.

(9) Cab windows shall be of safety glass or equivalent, in good condition and shall be kept clean.

(10) Cab of mobile equipment shall be kept free of extraneous materials.

(11) Adequate back stops or brakes shall be installed on inclined conveyor drive units to prevent conveyors from running in reverse if a hazard to personnel will result.

(12) No person shall be permitted to ride a power driven chain, belt, or bucket conveyor, unless specifically designed for the transportation of persons.

(13) Equipment operating speeds shall be prudent and consistent with conditions of roadway, grades, clearance, visibility, traffic, and the type of equipment used.

(14) Dust control measures shall be taken where dust significantly reduces visibility of equipment operators. Haulage roads shall be wet down as necessary unless dust is controlled adequately by other methods.

(15) Mobile equipment operators shall have full control of the equipment while it is in motion.

(16) Dippers, buckets, loading booms, or heavy suspended loads shall not be swung over the cabs of haulage vehicles until the drivers are out of the cabs and in safe locations, unless the trucks are designed specifically to protect the drivers from falling material.

(17) Only authorized persons shall be present in areas of loading or dumping operations.

(18) Unless safe provisions are made for persons to mount or leave equipment while it is in operation, the operator shall be notified of their intentions before getting on or off.

(19) Operators shall assume the normal operating position at all times while the vehicle is in motion and shall sit facing the direction of travel while operating equipment with dual controls.

(20) Men shall not work or pass under the buckets or booms of loaders in operation.

(21) When traveling between work areas, the equipment shall be secured in the travel position.

(22) Dippers, buckets, scraper blades, and similar movable parts shall be secured or lowered to the ground when not in use.

(23) Men shall not ride in dippers, buckets, forks, clamshells, or other parts of any equipment not specifically designed for the transportation of persons.

(24) Loaded cars or trucks shall not be moved until the loads are trimmed properly.

(25) Electrically powered mobile equipment shall not be left unattended unless the master switch is in the "off" position, all operating controls are in the neutral position, and the brakes are set or other equivalent precautions are taken against rolling.

(26) Mobile equipment shall not be left unattended unless the brakes are set. The wheels shall be turned into a bank or wall, or shall be blocked when such equipment is parked on a grade.

(27) Men shall not ride on top of loaded haulage equipment.

(28) Men shall not ride outside the cabs and beds of mobile equipment.

(29) Equipment which is to be hauled shall be properly loaded and secured.

(30) Dumping locations and haulage roads shall be kept reasonably free of water, debris, and spillage.

(31) Berms, bumper blocks, safety hooks, or similar means shall be provided to prevent over travel and overturning at dumping locations.

(32) If truck spotters are used, they shall be well in the clear while trucks are backing into dumping position and dumping; lights shall be used at night to direct trucks.

(33) Where overhead clearance is restricted, warning devices shall be installed and the restricted area shall be conspicuously marked.

(34) Ramps and dumps shall be of solid construction, of ample width, have ample side clearance and headroom, and be kept reasonably free of spillage.

(35) Lights, flares, or other warning devices shall be posted when parked equipment creates a hazard to vehicular traffic.

(36) Tires shall be deflated before repairs on them are started and adequate means shall be provided to prevent wheel locking rims from creating a hazard during tire inflation.

(37) Any load extending more than four (4) feet beyond the rear of the vehicle body shall be marked clearly with a red flag by day and a red light at night.

(38) A tow bar shall be used to tow heavy equipment. A safety chain shall be used in conjunction with the tow bar.

(39) When heavy equipment is to be towed, the towing vehicle shall be of suitable weight and strength to maintain safe control of the load.

805 KAR 3:080. Travelways.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to establish safety standards controlling travelways in the operation of the Commonwealth's surface type coal and clay mines which include strip and auger mining operations.

Section 1. Travelways.

- (1) Safe means of access shall be provided and maintained to all working places.
- (2) Crossovers, elevated walkways, elevated ramps, and stairways shall be of substantial construction, provided with handrails, and maintained in good condition. Where necessary, toeboards shall be provided.
- (3) Ladders shall be of substantial construction, maintained in good condition and regularly inspected.
- (4) Portable straight ladders shall be provided with nonslip bases, shall be placed against a safe backing at the proper angle, and set on secure footing.
- (5) Fixed ladders shall be anchored securely and installed to provide at least three (3) inches of toe clearance.
- (6) Fixed ladders shall have substantial railed landings at least every thirty (30) feet unless backguards are provided.
- (7) Steep fixed ladders (seventy (70) to ninety (90) from the horizontal) thirty (30) feet or more in length shall be provided with backguards, cages, or equivalent protection, starting at a point not more than seven (7) feet from the bottom of the ladder.
- (8) Fixed ladders shall project at least three (3) feet above landings, or substantial handholds shall be provided above the landings.
- (9) Wooden members of ladders shall not be painted.
- (10) Ladderways, stairways, walkways, and ramps shall be kept free of loose rock and extraneous materials.
- (11) Men climbing or descending ladders shall face the ladders and have both hands free for climbing.
- (12) Railed walkways shall be provided wherever persons are regularly required to walk along conveyor belts. Inclined railed walkways shall be nonskid or provided with cleats.
- (13) Openings above, below, or near travelways through which men or materials may fall shall be protected by railings, barriers, or covers. Where it is impractical to install such protective devices, adequate warning signals shall be posted.
- (14) Scaffolds and working platforms shall be of substantial construction and provided with handrails and maintained in good condition. Floorboards shall be laid properly and the scaffolds and working platforms shall not be overloaded. Working platforms shall be provided with toeboards where necessary.
- (15) Crossovers shall be provided where it is necessary to cross conveyors.
- (16) Moving conveyors shall be crossed only at designated crossover points.
- (17) Slippery walkways shall be provided with cleats and handrails and/or ropes.
- (18) Regularly used walkways and travelways shall be sanded, salted, or cleared of snow and ice as soon as practicable.

805 KAR 3:090. Electricity.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to establish safety standards in the use of electricity in the operation of the Commonwealth's surface type coal and clay mines which include strip and auger mining operations.

Section 1. Electricity.

- (1) Circuits shall be protected against excessive overloads by fuses or circuit breakers of the correct type and capacity.
- (2) Powerlines and telephones circuits shall be protected against short circuits and lightning.
- (3) Electric equipment and circuits shall be provided with switches or other controls. Such switches or controls shall be of approved design and construction and shall be properly installed.
- (4) Individual overload protection or short-circuit protection shall be provided for the trailing cables of mobile equipment.
- (5) Power wires and cables shall have adequate current-carrying capacity and shall be protected from mechanical injury.

(6) Neither crawler-mounted nor rubber-tired equipment shall run over trailing cables, unless the cables are properly bridged or otherwise protected.

(7) Distribution boxes shall be provided with disconnect switches.

(8) Trailing cable and power cable connections to junction boxes shall not be made or broken under load.

(9) Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments.

(10) Power wires and cables which present a fire hazard shall be well installed on acceptable insulators.

(11) Where metallic tools or equipment can come in contact with bare powerlines, the lines shall be guarded or deenergized.

(12) Telephone and low-potential electric signal wires shall be protected from contacting energized powerlines.

(13) High-potential transmission cables shall be covered, insulated, or placed according to acceptable electrical codes to prevent contact with low-potential circuits.

(14) The potential or bare signal wires accessible to personal contact should not exceed forty (40) volts.

(15) Splices in power cables, including ground conductor, where provided, shall be:

(a) Mechanically strong with adequate electrical conductivity;

(b) Effectively insulated and sealed to exclude moisture;

(c) Provided with mechanical protection and electrical conductivity as near as possible to that of the original.

(16) Shovel trailing cables shall not be moved with the shovel dipper unless cable slings or sleds are used.

(17) Energized high-potential cables shall be handled with insulated hooks or tongs.

(18) Electrical equipment shall be deenergized before work is done on such equipment. Switches shall be locked out and suitable warning signs posted by the individuals who are to do the work; locks shall be removed only by authorized persons.

(19) Power circuits shall be deenergized before work is done on such circuits unless hot line tools are used. Switches shall be locked out and suitable warning signs posted by the individuals who are to do the work; locks shall be removed only by authorized persons.

(20) Principal power switches shall be labeled to show which units they control, unless identification can be made readily by location.

(21) At least three (3) feet of clearance shall be provided around all parts of stationary electric equipment or switch-gear where access or travel is necessary.

(22) Dry wooden platforms, insulating mats, or other electrically nonconductive materials shall be kept in place of all switchboards and power-control switches where shock hazards exist. However, metal plates on which a person normally would stand kept at the same potential as the grounded metal noncurrent carrying parts of the power switches to be operated may be used.

(23) Suitable danger signs shall be posted at all major electrical installations.

(24) Areas containing major electrical installations shall be entered only by authorized personnel.

(25) Electrical connections and resistor grids that are difficult or impractical to insulate shall be guarded, unless protection is provided by location.

(26) Reverse-current protection shall be provided at storage battery-charging stations.

(27) All metal enclosing or encasing electrical circuits shall be grounded or provided with equivalent protection. (This requirement does not apply to battery-operated equipment.)

(28) Metal fencing and metal buildings enclosing transformers and switch-gear shall be grounded.

(29) Frame grounding or equivalent protection shall be provided for mobile equipment powered through trailing cables.

(30) Continuity and resistance of grounding systems shall be tested immediately after installation.

(31) Electric equipment and wiring shall be inspected by a competent person as often as necessary to assure safe operating conditions.

(32) When a potentially dangerous condition is found, it shall be corrected before equipment or wiring is energized.

(33) Inspection and cover plates on electrical equipment shall be kept in place at all times except during testing or repairs.

(34) Circuits shall be deenergized before fuses are removed or replaced.

(35) Fuse tongs or hot line tools shall be used when fuses are removed or replaced in medium or high voltage circuits.

(36) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections.

(37) Surplus trailing cables to shovels, cranes, and similar equipment shall be stored in cable boots or on reels mounted on the equipment or otherwise protected from mechanical damage.

(38) Operating controls shall be installed so that they can be operated without danger of contact with energized conductors.

(39) Equipment with booms or masts which are not properly protected shall not be operated where the booms or masts can come within ten (10) feet of an energized overhead powerline.

(40) Overhead high-potential powerlines shall be installed as specified by the National Electrical Safety Code.

(41) When equipment must be moved under energized power lines and the clearance is less than ten (10) feet, the power lines shall be deenergized or other precautions shall be taken.

(42) Guy wires from poles supporting high voltage transmission lines shall be securely connected to the system ground or be provided with insulators installed near the pole end.

(43) Telegraph, telephone, or signal wires shall not be installed on the same crossarm with power conductors. When carried on poles supporting power lines, they shall be installed as specified by the National Electrical Safety Code.

(44) Transformers shall be totally enclosed, or shall be placed at least fifteen (15) feet above the ground, or installed in a transformer house, or surrounded by a substantial fence at least six (6) feet high and at least three (3) feet from any energized parts, casings, or wiring.

(45) Transformer enclosures shall be kept locked against unauthorized entry.

(46) Tools and supplies shall be carried in the hands and not on the shoulders when men travel near bare power conductors.

805 KAR 3:100. Equipment use and operation.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070 authorizes the Secretary of the Energy and Environment Cabinet to promulgate, amend, or rescind any administrative regulations as necessary and suitable for the proper administration of KRS Chapter 351. This administrative regulation establishes safety standards controlling the use and operation of equipment in the Commonwealth's surface type coal and clay mines, which include strip and auger mining operations.

Section 1. Use of Equipment Guards.

(1) The following items shall be guarded to prevent injury

- (a) Gears;
- (b) Sprockets;
- (c) Chains;
- (d) Drive, head, tail, and take-up pulleys;
- (e) Flywheels;
- (f) Couplings;
- (g) Shafts;
- (h) Sawblades;
- (i) Fan inlets; and
- (j) Similar exposed moving machine parts that may cause injury to persons.

(2) An overhead belt shall be guarded if the whipping action from a broken belt may be hazardous to a person below.

(3) A guard at conveyor drive, head and tail pulleys shall be sufficient to prevent a person from reaching behind the guard and becoming caught between the belt and the pulley.

(4) A protruding set screw on revolving parts shall be guarded.

(5) Except when testing the machinery, a guard shall be securely in place while machinery is being operated.

(6) A guard shall be sufficiently strong and maintained to provide the required protection.

(7) A stationary grinding machine other than special bit grinder shall be equipped with:

(a) Peripheral hoods (less than ninety (90) degree throat openings) capable of withstanding the force of a bursting wheel;

(b) Adjustable tool rests set as close as practical to the wheel; and

(c) Safety washers.

(8) A face shield or goggles, in good condition, shall be worn when operating a grinding wheel.

(9) A hand-held power tool, other than rock drill, shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety devices.

(10) A guard or shield shall be provided in areas where flying or falling materials present a hazard.

(11)(a) A vehicle such as a fork lift, truck, front-end loader, and bulldozer shall be provided with rollover protection if necessary to protect the operator.

(b)1. An excavator manufactured after January 1, 2011 shall be provided with rollover protection. The rollover protection shall meet current International Organization for Standardization (ISO) standards in place when the machine was manufactured.

2. Effective January 1, 2016, an excavator that operates in an application with the risk of a rollover shall be equipped with rollover protection that shall meet, at a minimum, the ISO 12117-2:2008 standard or the equivalent ISO standard.

(12)(a) A vehicle such as a fork lift, truck, front-end loader, and bulldozer, shall be provided with falling object protection if necessary to protect the operator against falling material.

(b)1. An excavator manufactured after January 1, 2011 shall be provided with falling object protection. The falling object protection shall meet ISO standards in place when the machine was manufactured.

2. Effective January 1, 2016, an excavator that operates in an application with the risk of falling objects shall be equipped with falling object protection that shall meet, at a minimum, the ISO 10262:1998 Level II standard or the equivalent ISO standard.

(13) Unsafe equipment or machinery shall be removed from service immediately.

(14) Machinery and equipment shall be operated only by an authorized and experienced person.

(15) A repair or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except if machinery motion is necessary to make an adjustment or if nonenergized components of large machinery can be safely repaired while the machine is operating.

(16) A person shall not work on mobile equipment in a raised position until it has been blocked in place securely. This shall not preclude the use of equipment specifically designed, such as elevated mobile work platforms.

(17) A drive belt shall not be shifted while in motion unless the machine is provided with mechanical a shifter.

(18) A belt, chain, or rope shall not be guided onto a power driven moving pulley, sprocket, or drum with the hands except on slow moving equipment especially designed for hand feeding.

(19) A pulley or conveyor shall not be cleaned manually while the conveyor is in motion.

(20) A belt dressing shall not be applied manually while the belt is in motion unless an aerosol-type dressing is used.

(21) Machinery shall not be lubricated while in motion if a hazard exists unless equipped with extended fittings or cups.

805 KAR 3:110. Employees' personal protection.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to establish safety standards controlling equipment used for personal protection of employees in the operation of the Commonwealth's surface type coal and clay mines which include strip and auger mining operations.

Section 1. Personal Protection.

(1) Adequate first aid materials, including stretchers and blankets, shall be provided at places convenient to all working areas. Water or neutralizing agents shall be available where corrosive chemicals or other harmful substances are stored, handled, or used.

(2) All persons shall wear suitable hard hats when in or around mine plants or active workings of the mine.

(3) All persons shall wear suitable protective footwear when in or around mine plants or active workings of the mine.

(4) All persons shall wear safety glasses, goggles, or face shields when doing work hazardous to the eyes.

(5) Safety belts and lines shall be worn when men work where there is danger of falling; a second person shall tend the life line when bins, tanks or other dangerous areas are entered.

(6) Life jackets or belts shall be worn where there is danger of falling into deep water.

(7) Protective clothing, rubber gloves, goggles, or face shields shall be worn by person handling substances that are corrosive, toxic, or injurious to the skin.

(8) Protective clothing or equipment and face shields or goggles shall be worn when welding, cutting or working with molten metal.

(9) Snug-fitting clothing shall be worn by persons working around moving equipment and machinery.

(10) Protective gloves shall be worn by employees handling materials which may cause injury.

(11) Gloves shall not be worn where they could create a hazard by becoming entwined or caught in moving parts of machinery.

(12) Effective hearing protection shall be worn where noise levels may cause permanent ear damage or hearing loss, or noise shall be reduced to safe levels, unless the wearing of the protective devices would create a greater danger to the employee.

805 KAR 3:120. Augering.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to establish safety standards controlling planning, inspection, persons not entering auger holes, operation of auger equipment, and blocking of auger holes in the Commonwealth's safety standards controlling the operations of surface type auger operations in coal mines.

Section 1. Auger Planning. Before augering is done, advance planning shall be made to ensure that no hazards shall be created affecting active underground workings. Auger mine workings and holes drilled shall be located so as to prevent:

- (1) The interference with the ventilation system of any underground mine;
- (2) Inundation hazards from the surface to active underground workings.

Section 2. Auger Inspection.

(1) At least fifty (50) feet on each side of highwalls being drilled shall be inspected for loose material before drilling or other work in the area is begun and at least once during each operating shift. Any dangerous material shall be removed before drilling operations are begun.

(2) When abandoned mines or abandoned parts of active mines are penetrated by drilling, machinery shall be stopped and tests shall be made at the collar of the hole for explosive gas or oxygen deficiency by a competent person qualified to use approved instruments to make such tests. If tests show the presence of either, the equipment shall not be operated until the condition has been corrected.

Section 3. Auger Holes; Persons Not to Enter.

(1) No person shall enter an auger hole for any purpose without having first received permission from a representative of the Kentucky Department of Mines and Minerals.

(2) Auger machines and other related equipment on which persons are required to work during drilling operations shall be protected against falling material from highwalls by heavy gauge screen or equivalent material subject to the approval of the mine inspector. The protective screen shall permit workmen to keep the highwall in view at all times.

(3) No work shall be done on the highwall in the vicinity of drilling equipment while it is in operation.

Section 4. Auger Equipment; Operation.

(1) Persons shall stay in the clear of the auger train while it is in motion and they shall not pass over or under the auger train except where crossing facilities are provided.

(2) Persons must be in the clear while auger sections are being swung into position.

(3) Auger operators shall not leave the controls of the equipment while the auger is operating.

(4) When auger operations are performed after dark, adequate illumination shall be provided.

Section 5. Auger Holes; Blocking. Auger holes shall be securely blocked by spoil or other suitable material before they are abandoned.

Notes: _

CHAPTER 5 ROOF CONTROL

805 KAR 5:010. Fees for licenses to mine.

RELATES TO: KRS 351.175(3)

STATUTORY AUTHORITY: KRS 351.070(13), 351.175(3)

NECESSITY, FUNCTION AND CONFORMITY: KRS 351.175(3) requires the Department of Mines and Minerals to establish mine license fees. This administrative regulation establishes the fees to be charged for a license to operate a mine.

Section 1. The amount of the license fee for a mine shall be established as follows:

(1) The annual license fee for a new mine shall be \$300. A "new mine" shall include a mine which has previously produced coal, but was not licensed and operating in the immediately previous year.

(2) The annual license fee for a mine licensed and producing coal in the immediately preceding calendar year shall be as follows:

(a) Mines producing 100,000 tons or less in the previous year - \$300.

(b) Mines producing more than 100,000 tons in the previous year - \$300, plus \$100 for each additional 100,000 tons mined or part thereof.

805 KAR 5:030. Prohibition against working or traveling under unsupported roof; penalties.

RELATES TO: KRS 351.020, 352.201

STATUTORY AUTHORITY: KRS Chapter 13A, 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulation necessary and suitable for the proper administration of KRS Chapter 351. 352.201 requires each underground mine to have an approved roof control plan and directs that a person shall not proceed beyond temporary or permanent roof support. EO 2009-538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet. This administrative regulation establishes procedures for the department's response in circumstances in which a person works or travels under an unsupported roof.

Section 1. Definition.

(1) "Mine Foreman" is defined by KRS 351.010 (1)(r)

(2) "Unsupported Roof" means the roof in a portion of an underground coal mine in which a temporary or permanent roof support system has not been installed:

(a) Including all areas of an underground coal mine, such as breaks, fall areas, and pillar lines; and

(b) Excluding a roof which has adequate natural support either initially or following the installation of artificial roof support.

Section 2.

(1)(a) A person shall not work or travel under an unsupported roof in an underground coal mine.

(b) Mining-related activities, including equipment installation and maintenance, clean-up or activities preparatory to the installation of temporary or permanent roof support shall not be performed under an unsupported roof, and justification for performing these acts shall not be accepted by the department.

(2)(a) A person working in an underground coal mine shall be instructed by management of the mine of the hazards of proceeding beyond temporary or permanent roof support.

(b) A person who proceeds beyond temporary or permanent roof support shall be personally liable for violation of proceeding beyond temporary or permanent roof support.

(c) A mine foreman or section foreman shall exercise primary and ultimate responsibility to ensure that a person shall not work or travel under an unsupported roof.

(3)(a) If an inspector for the department does not observe a person working or traveling under an unsupported roof, the inspector shall determine if the area below an unsupported roof appears to have been used or otherwise occupied by mining personnel.

(b) Use or occupancy shall be deemed to have occurred if there is physical evidence indicating to the inspector that a person has worked or traveled under an unsupported roof.

Section 3.

(1) If an inspector of the department observes or determines that mine personnel have proceeded under an unsupported roof, the inspector shall document the observation in a report to the district supervisor. That report shall include:

- (a) the name and location of the mine at which the violation is alleged to have occurred;
 - (b) the time and date of the violation, if known;
 - (c) the person observed or believed to have worked or traveled under unsupported roof;
 - (d) the basis for that belief if conduct was not actually observed;
 - (e) the name of the mine foreman or section foreman under whose responsibility the person was working when at the conduct occurred; and
 - (f) the name of the instructor who administered the most recent training to the person alleged to have proceeded under unsupported roof, the date of that training, and the location at which the training was administered
- (2) The report shall be tendered to the district supervisor within two (2) working days of the date upon which the inspector observes or becomes aware of the violation.

(3) Upon receipt of the report from the inspector, the district supervisor shall forward to the Executive Director of the Office of Mine Safety and Licensing, a copy of the report and a letter describing the severity of the violation and naming personnel who are responsible for the violation.

805 KAR 5:070. Minimum requirements for roof support and the roof control plan approval process.

RELATES TO: KRS 352.201

STATUTORY AUTHORITY: KRS 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.201 requires each underground coal mine to formulate and follow an approved roof control plan. This proposed administrative regulation establishes those minimum standards for roof support and the roof control plan approval process.

Section 1. Definitions. The definitions established in KRS 351.010 and 352.010 shall apply to this administrative regulation, in addition to those set out below:

- (1) "Automated temporary roof support" or "ATRS" means a mechanical device used to temporarily support the roof while roof bolts are being installed.
- (2) "Automated temporary roof support system" means the devices and mechanisms - including the ATRS - used, and methods followed by which ATRS is activated and set to support the roof.
- (3) "Mining height" means the distance between the bottom of the coal seam and the bottom of permanent mechanical roof support, and specifically does not include or apply to the brushing of top or bottom for construction work and to coal left unmined for purposes of providing additional roof support.
- (4) "Pillar recovery" means any reduction in pillar size during retreat mining.
- (5) "Roof control plan" means the plan and its revisions which has been adopted by the licensee for support of the mine roof and approved by the commissioner or his authorized representative pursuant to KRS 352.201(1).

Section 2. Mining Methods.

- (1) The method of mining shall not expose any person to hazards caused by excessive widths of rooms, crosscuts and entries, or faulty pillar recovery methods. Pillar dimensions shall be compatible with effective control of the roof, face, ribs and coal or rock bursts.
- (2) A sightline or other method of directional control shall be used to maintain the projected direction of mining in entries, rooms, crosscuts and pillar splits.
- (3) A sidecut shall be started only from an area that is supported in accordance with the roof control plan.
- (4) A working face shall not be mined through into an unsupported area of active workings, except when the unsupported area is inaccessible.
- (5) Additional roof support shall be installed where:
 - (a) The width of the opening specified in the roof control plan is exceeded by more than twelve (12) inches; and
 - (b) The distance over which the excessive width exists is more than five (5) feet.

Section 3. Roof Bolting.

(1) For roof bolts and accessories addressed in American Society for Testing and Materials (ASTM, F 432-95), the licensee shall:

- (a) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM; and

(b) Make this certification available to an authorized representative of the commissioner.

(2) Roof bolts and accessories not addressed in the material incorporated by reference may be used, if the use of those roof bolts and accessories is approved by the commissioner or his authorized representative based on:

(a) Demonstrations which show that the materials have successfully supported the roof in an area of a coal mine with similar strata, opening dimensions and roof stresses; or

(b) Tests which show the materials to be effective for supporting the roof in an area of the affected mine which has strata, opening dimensions and roof stresses similar to those in the area where the roof bolts are to be used; during the test process, access to the test area shall be limited to persons necessary to conduct the test.

(3) A bearing plate shall be firmly installed with each roof bolt.

(4) A bearing plate used directly against the mine roof shall be at least six (6) inches square, except that if the mine roof is firm and not susceptible to sloughing, bearing plates five (5) inches square may be used.

(5) A bearing plate used with wood or metal materials shall be at least four (4) inches square.

(6) Wooden materials that are used between a bearing plate and the mine roof in an area which will be used for three (3) years or more shall be treated to minimize deterioration.

(7) When washers are used with roof bolts, the washers shall conform to the shape of the roof bolt head and bearing plate.

(8) The diameter of a finishing bit shall be within a tolerance of plus or minus 0.030 inch of the manufacturer's recommended hole diameter for the anchor used.

(9) When separate finishing bits are used, they shall be distinguishable from other bits.

Section 4. Tensioned Roof Bolts.

(1) Roof bolts that provide support by creating a beam of laminated strata shall be at least thirty (30) inches long. Roof bolts that provide support by suspending the roof from overlying stronger strata shall be long enough to anchor at least twelve (12) inches into the stronger strata.

(2) Test holes, spaced at intervals specified in the roof control plan, shall be drilled to a depth of at least twelve (12) inches above the anchorage horizon of the bolts being used. When a test hole indicates that bolts would not anchor in competent strata, corrective action shall be immediately taken.

(3) The installed torque or tension ranges for roof bolts as specified in the roof control plan shall maintain the integrity of the support system and shall exceed neither the yield point of the roof bolt nor anchorage capacity of the strata.

(4) In each roof bolting cycle, the actual torque or tension of the first tensioned roof bolt installed with each drill head shall be measured immediately after it is installed. Thereafter, for each drill head used, at least one (1) roof bolt out of every four (4) installed shall be measured for actual torque or tension. If the torque or tension of any of the roof bolts measured is not within the range specified in the roof control plan, corrective action shall be taken.

(5) In a working place from which coal is produced during any portion of a twenty-four (24) hour period, the actual torque or tension on at least one (1) out of every ten (10) previously installed, mechanically anchored, tensioned roof bolts shall be measured from the outby corner of the last open crosscut to the face in each advancing section. Corrective action shall be taken if the majority of the bolts measured:

(a) Do not maintain at least the following percentages of the minimum torque or tension specified in the roof control plan:

1. Seventy (70) percent; or

2. Fifty (50) percent if the roof bolt plates bear against wood;

(b) Have exceeded the maximum specified torque or tension by fifty (50) percent.

(6) The licensee or a person designated by him shall certify by signature and date that measurements required by subsection (5) of this section have been made. This certification shall be maintained for at least one (1) year and shall be made available to an authorized representative of the commissioner and representatives of the miners.

(7) A tensioned roof bolts installed in the roof support pattern shall not be used to anchor trailing cables or used for any other purpose that could affect the tension of the bolt. The hanging of trailing cables, line brattice, telephone lines, or other similar devices which do not place a sudden load on the bolts is permitted.

(8) An angle compensating device shall be used when tensioned roof bolts are installed at an angle greater than five (5) degrees from the perpendicular to the bearing plate.

(9) The first nontensioned grouted roof bolt installed during each roof bolting cycle shall be tested during or immediately after the first row of bolts has been installed. If the bolt tested does not withstand at least 150 foot-pounds of torque without rotating in the hole, corrective action shall be taken.

Section 5. Installation of Roof Support Using Mining Machines with Integral Roof Bolters. When roof bolts are installed by a continuous mining machine with integral roof bolting equipment:

(1) The distance between roof bolts shall not exceed ten (10) feet crosswise;

(2) Roof bolts to be installed nine (9) feet or more apart shall be installed with a wooden crossbar at least three (3) inches thick and eight (8) inches wide, or material which provides equivalent support; and

(3) Roof bolts to be installed more than eight (8) feet but less than nine (9) feet apart shall be installed with a wooden plank at least two (2) inches thick and eight (8) inches wide, or material which provides equivalent support.

Section 6. Conventional Roof Support.

(1) When conventional roof support materials are used as the only means of support:

(a) The width of any opening shall not exceed twenty (20) feet;

(b) The spacing of roadway roof support shall not exceed five (5) feet;

(c) Supports shall be installed to within five (5) feet of the uncut face;

(d) If supports nearest the face must be removed to facilitate the operation of face equipment, equivalent temporary support shall be installed prior to their removal;

(e) A straight roadway shall not exceed sixteen (16) feet wide where full overhead support is used and fourteen (14) feet wide where only posts are used;

(f) A curved roadway shall not exceed sixteen (16) feet wide; and

(g) The roof at the entrance of all openings along travelways which are no longer needed for storing supplies or for travel of equipment shall be supported by extending the line of support across the opening.

(2) Conventional roof support materials shall meet the following specifications:

(a) The minimum diameter of cross-sectional area of wooden posts shall be as follows:

Post Length (in inches)	Diameter of round post (in inches)	Cross-sectional area of split post (in square inches)
60 or less	4	13
Over 60 to 84	5	20
Over 84 to 108	6	28
Over 108 to 132	7	39
Over 132 to 156	8	50
Over 156 to 180	9	64
Over 180 to 204	10	79
Over 204 to 228	11	95
Over 228	12	113

(b) Wooden materials used for support shall have the following dimensions:

1. Cap blocks and footings shall have flat sides and be at least two (2) inches thick, four (4) inches wide and twelve (12) inches long;

2. Crossbars shall have a minimum cross-sectional area of twenty-four (24) square inches and be at least three (3) inches thick;

3. Planks shall be at least six (6) inches wide and one (1) inch thick.

(c) Cribbing materials shall have at least two (2) parallel flat sides.

(3)(a) A cluster of two (2) or more posts that provide equivalent strength may be used to meet the requirements of subsection (2)(a) of this section.

(b) A post shall not have a diameter less than four (4) inches or have a cross-sectional area less than thirteen (13) square inches.

(4) Materials other than wood used for support shall have support strength at least equivalent to wooden material meeting the applicable provisions of this section.

(5) Posts and jacks shall be tightly installed on solid footing.

(6) If a post is installed under roof susceptible to sloughing, a cap block, plank, crossbar or materials that are equally effective shall be placed between the post and the roof.

(7) Blocks used for lagging between the roof and crossbars shall be spaced to distribute the load.

(8) A jack used for roof support shall be used with at least thirty-six (36) square inches of roof-bearing surface.

Section 7. Pillar Recovery.

(1) Full and partial pillar recovery shall not be conducted on the same pillar line, except where physical conditions such as unstable floor or roof, falls of roof, oil and gas well barriers or surface subsidence require that pillars be left in place.

(2) Before mining is begun in a pillar split or lift:

(a) At least two (2) rows of breaker posts or equivalent support shall be installed as close to the initial intended breakline as practicable and across each opening leading into an area where full or partial pillar extraction has been completed; and

(b) A row of roadside-radius (turn) posts or equivalent support shall be installed leading into the split or lift.

(3) Before mining is started on a final stump:

(a) At least two (2) rows of posts or equivalent support shall be installed on not more than four (4) foot centers on each side of the roadway;

(b) 1. No more than one (1) roadway, which shall not exceed sixteen (16) feet wide, shall lead from solid pillars to the final stump of a pillar; and

2. If posts are used as the sole means of roof support, the width of the roadway shall not exceed fourteen (14) feet.

(4) During open-end pillar extraction:

(a) At least two (2) rows of breaker posts or equivalent support shall be installed on not more than four (4) foot centers.

(b) These supports shall be:

1. Installed between the lift to be started and the area where pillars have been extracted; and

2. Maintained to within seven (7) feet of the face.

(c) The width of the roadway shall not exceed sixteen (16) feet.

(d) If posts are used as the sole means of roof support, the width of the roadway shall not exceed fourteen (14) feet.

Section 8. Installation and Use of Automated Temporary Roof Support Systems. This section establishes the requirements for and criteria of automated temporary roof support in an underground coal mine in which both the coal bed thickness and the mining height exceed thirty (30) inches.

(1) All roof bolting machines and continuous mining machines with integral roof drills used in a working place in a coal mine shall be provided with an approved automated temporary roof support system unless other methods of temporarily supporting the roof have been approved by the commissioner.

(2) Automated temporary roof support systems and all other methods of temporarily supporting the roof shall be approved on an individual mine basis by the commissioner and shall become part of the roof control plan required by KRS 352.201(1).

(3)(a) The commissioner may grant a waiver of the requirement for the use of an automated temporary roof support system if:

1. It has been demonstrated by the licensee and determined during an investigation by an authorized representative of the commissioner that:

a. The use of the system would create a greater danger in areas where permanent supports have been installed than the method employed or proposed for temporary support of the roof; or

b. The technology of an automated temporary roof support system does not exist to allow compliance with the requirements of subsection (5) of this section;

2. The configuration of the surface of the roof or other conditions make the use of an ATRS system ineffective or impractical; or

3. The licensee's present roof control plan provides adequate safety to the miner due to the geology or condition of the roof.

(b) In granting a waiver, the commissioner may approve the use of temporary jacks and posts in lieu of the ATRS.

(4)(a) In the event of a mechanical breakdown in the ATRS, the licensee shall:

1. Provide for comparable temporary roof support;

2. Immediately notify the commissioner or his authorized representative of:

a. The temporary roof support being used; and

b. The provisions being made to repair or replace the ATRS.

(b) The commissioner or his authorized representative shall order the removal of miners from the work area, if it is determined that the roof support system being used during repair of the ATRS does not adequately provide for their safety.

(5) A machine using, or used as, an automated temporary roof support system shall comply with the following minimum requirements unless a waiver has been granted or another method of temporarily supporting the roof has been approved by the commissioner, pursuant to subsection (2) of this section:

(a) The controls necessary to position the machine and place the ATRS against the roof shall be operated from under permanently supported roof, unless the design of the system provides adequate protection of the miner;

(b) The ATRS shall be placed firmly against the roof prior to work in by the permanent roof supports and shall remain in place while work is performed, unless the configuration of the roof surface prevents uniform placement of the ATRS;

(c) A hydraulic jack affecting the support capacity of an ATRS shall have check valves or equivalent protection, to prevent support failure if there is a sudden loss of hydraulic pressure;

(d) An ATRS used in conjunction with single bolt installation shall elastically support, at a minimum, a deadweight load of 11,250 pounds for each five (5) feet by five (5) feet square area of the roof to be supported;

(e) An ATRS consisting of pads or crossbars used in single or multiple rows shall elastically support, at a minimum, a deadweight load in pounds of $450 \times ((L+5) \times (W+5))$, where L is the length of the support structure from tip to tip and W is the width taken at the center line of a support structure to the center line of another support structure;

(f) The actual capacity of the ATRS to support elastically a deadweight load shall be certified by a registered professional engineer;

(g) The distance that the ATRS may be set in by the last row of permanent supports shall be dependent on the row spacing requirements of the permanent roof supports and shall be authorized in the approved roof control plan; and

(h) A person shall not work or travel in by the ATRS.

Section 9. Manual Installation of Temporary Support.

(1) During manual installation of temporary support:

(a) Only a person engaged in installing the support shall proceed beyond permanent roof support;

(b) The first temporary support shall not be set more than five (5) feet from a permanent roof support and the rib.

(2) A temporary support shall be:

(a) Set so that the person installing the support remains between it and two (2) other supports which shall not be more than five (5) feet away;

(b) Completely installed prior to installation of the next temporary support;

(c) Placed on no more than five (5) foot centers.

(3) After temporary supports have been installed, work or travel beyond the permanent roof support shall be between:

(a) Temporary supports and the nearest permanent support; or

(b) Other temporary supports.

Section 10. Warning Devices. Except during the installation of roof supports, the end of permanent roof support shall:

(1) Be posted with a readily visible warning; or

(2) Have a physical barrier installed to impede travel beyond permanent support.

Section 11. Roof Testing and Scaling.

(1) A visual examination of the roof, face and ribs shall be made immediately before any work is started in an area and during the workshift as conditions warrant.

(2) If the mining height permits and the visual examination does not disclose a hazardous condition, sound and vibration roof tests, or other equivalent tests, shall be made where supports are to be installed. If sound and vibration tests are made, they shall be conducted:

(a) After the automated temporary roof support system is set against the roof and before other support is installed; or

(b) Prior to manually installing a roof support.

(3) Sound and vibration roof tests, or other equivalent tests, shall begin under supported roof and shall not progress further than the location where the next support is to be installed.

(4)(a) If a hazardous roof, face, or rib condition is detected, the condition shall be corrected before work or travel is conducted in the affected area.

(b) If the affected area is left unattended, each entrance to the area shall:

1. Be posted with a readily visible warning; or

2. Have a physical barrier installed to impede travel in the area.

(c) A bar for removing loose material shall be:

1. Available in the working place; or

2. On all face equipment, except haulage equipment; and

3. Of a length and design that will permit the removal of loose material from a position that will not expose the worker to injury from falling material.

Section 12. Rehabilitation of Areas with Unsupported Roof.

(1) General rehabilitation plans shall be submitted with the roof control plan.

(2) Before rehabilitating an area where a roof fall has occurred or the roof has been removed by mining machines or blasting:

- (a) The licensee shall establish the clean-up and support procedures to be followed;
 - (b) A person assigned to perform rehabilitation work shall be instructed in the clean-up and support procedures; and
 - (c) Ineffective, damaged or missing roof support at the edge of the area to be rehabilitated shall be replaced or other equivalent support installed.
- (3) A person performing rehabilitation shall be experienced in that work or supervised by a person, designated by the licensee, who is experienced.
- (4) If work is not being performed to rehabilitate an area in active workings where a roof fall has occurred or the roof has been removed by mining machines or by blasting, each entrance to the area shall be supported by at least one (1) row of posts on not more than five (5) foot centers, or equally effective support.

Section 13. Supplemental Support Materials, Equipment and Tools.

- (1) A supply of supplemental roof support materials and the tools and equipment necessary to install the materials shall be available at a readily accessible location on each working section or within four (4) crosscuts of each working section.
- (2) The quantity of support materials, tools, and equipment made available in accordance with this section shall be sufficient to support the roof if adverse roof conditions are encountered, or in the event of a roof fall.

Section 14. Longwall Mining Systems. For each longwall mining section, the roof control plan shall specify:

- (1) The methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall; and
- (2) The procedures that shall be followed if a ground failure prevents travel out of the section through the tailgate side of the longwall.

Section 15. Roof Control Plan.

- (1) When revisions are proposed to the roof control plan required by KRS 352.201, only the revised pages shall be submitted unless otherwise specified by the commissioner or his authorized representative.
- (2) The licensee shall be notified in writing of the approval or denial of a proposed roof control plan or proposed revision.
- (3) When approval of a proposed plan or revision is denied, the deficiencies of the plan or revision and recommended changes shall be specified and the licensee shall be afforded an opportunity to discuss the deficiencies and changes with the commissioner or his authorized representative.
- (4) Before new support materials, devices or systems other than roof bolts and accessories are used as the only means of roof support, the commissioner or his authorized representative may require that the effectiveness of those new support materials, devices, or systems be demonstrated by experimental installations.
- (5) A proposed roof control plan or revision to a roof control plan shall not be implemented before it is approved.
- (6) Before implementing an approved revision to a roof control plan, a person who is affected by the revision shall be instructed in its provisions.
- (7) The approved roof control plan and any revision shall be available to the miners and representative of miners at the mine.

Section 16. Roof Control Plan Information. The following information shall be included in each roof control plan:

- (1) The name and address of the licensee;
- (2) The name, address, mine identification number and location of the mine;
- (3) The name and title of the company official responsible for the plan;
- (4) A typical columnar section of the mine strata which shall:
 - (a) Show the name and the thickness of the coalbed to be mined and any persistent partings;
 - (b) Identify the type and show the thickness of each stratum up to and including the main roof above the coalbed and for distance of at least ten (10) feet below the coalbed; and
 - (c) Indicate the maximum cover over the area to be mined.
- (5) A description and drawings of the sequence of installation and spacing of supports for each method of mining used;
- (6) If an automated temporary roof support system is used, the maximum distance that an automated temporary roof support system is to be set beyond the last row of permanent support;
- (7) If tunnel liners or arches are to be used for roof support, specifications and installation procedures for the liners or arches;
- (8) Drawings indicating the planned width of openings, size of pillars, method of pillar recovery, and the sequence of mining pillars;

(9) A list of all support material required to be used in the roof, face and rib control system, including, if roof bolts are to be installed:

- (a) The length, diameter, grade and type of anchorage unit to be used;
- (b) The drill hole size to be used; and
- (c) The installed torque or tension range for tensioned roof bolts.

(10) When mechanically anchored tensioned roof bolts are used, the intervals at which test holes shall be drilled;

(11) A description of the method of protecting persons:

- (a) From falling material at drift openings; and
- (b) When mining approaches within 150 feet of an outcrop.

(12) A drawing submitted with a roof control plan shall contain a legend explaining all symbols used and shall specify the scale of the drawing, which shall not be less than five (5) feet to the inch or more than twenty (20) feet to the inch;

(13) All roof control plan information, including drawings, shall be submitted on eight and one half (8.5) by eleven (11) inch paper, or paper folded to this size; and

(14) Any other information required by the commissioner.

Section 17. Roof Control Plan Approval Criteria. This section sets forth the criteria that shall be considered on a mine-by-mine basis in the formulation and approval of roof control plans and revisions.

(1) Roof bolts shall be installed on centers not exceeding five (5) feet lengthwise and crosswise, except as approved by the commissioner or his authorized representative.

(2) When tensioned roof bolts are used as a means of roof support, the torque or tension range shall be capable of supporting roof bolt loads of at least fifty (50) percent of either the yield point of the bolt or anchorage capacity of the strata, whichever is less.

(3) Any opening that is more than twenty (20) feet wide shall be supported by a combination of roof bolts and conventional supports.

(4) In any opening more than twenty (20) feet wide:

(a) Posts shall be installed to limit each roadway to sixteen (16) feet wide, where straight, and eighteen (18) feet wide, where curved; and

(b) A row of posts shall be set for each five (5) feet of space between the roadway posts and the ribs.

(5) An opening shall not be more than thirty (30) feet wide.

(6) If installing roof support using mining machines with integral roof bolters:

(a) Before an intersection or pillar split is started, roof bolts shall be installed on at least five (5) foot centers where the work is performed;

(b) Where the roof is supported by only two (2) roof bolts crosswise, openings shall not be more than sixteen (16) feet wide.

(7) Pillar recovery.

(a) During development, any dimension of a pillar shall be at least twenty (20) feet;

(b) Pillar splits and lifts shall not be more than twenty (20) feet wide;

(c) A breaker post shall be installed on a center of not more than four (4) feet;

(d) Roadside-radius (turn) posts, or equivalent support, shall be installed on not more than four (4) foot centers leading into each pillar split or lift;

(e) Before full pillar recovery is started in areas where roof bolts are used as the only means of roof support and openings are more than sixteen (16) feet wide, at least one (1) row of posts shall be installed to limit the roadway width to sixteen (16) feet. These posts shall be:

1. Extended from the entrance to the split through the intersection outby the pillar in which the split or lift is being made; and

2. Spaced on not more than five (5) foot centers.

(8) Openings that create an intersection shall be permanently supported or at least one row of temporary supports shall be installed on not more than five (5) foot centers across the opening before any other work or travel is permitted in the intersection.

(9) In a working section where the mining height is below thirty (30) inches, an automated temporary roof support system shall be used to the extent practicable during the installation of roof bolts with roof bolting machines and continuous-mining machines with integral roof bolters.

(10) In a mine with a longwall mining system:

(a) Systematic supplemental support shall be installed throughout:

1. The tailgate entry of the first longwall panel prior to any mining; and

2. In the proposed tailgate entry of each subsequent panel in advance of the frontal abutment stresses of the panel being mined.

(b) If a ground failure prevents travel out of the section through the tailgate side of the longwall section, the roof control plan shall address:

1. Notification of miners that the travelway is blocked;
2. Reinstruction of miners regarding escapeways and escape procedures in the event of an emergency;
3. Reinstruction of miners on the availability and use of self-contained self-rescue devices;
4. Monitoring and evaluation of the air entering the longwall section;
5. Location and effectiveness of the two (2) way communication system; and
6. A means of transportation from the section to the main line.

(c) The plan provisions addressed by paragraph (b) of this subsection shall remain in effect until a travelway is reestablished on the tailgate side of a longwall section.

(11) A roof control plan that does not conform to the criteria set out in this section may be approved by the commissioner or his authorized representative, if the plan provides effective control of the roof, face, and ribs. The commissioner or his authorized representative may require additional safety measures in a roof control plan.

Section 18. Evaluation and Revision of Roof Control Plan.

(1) A revision of the roof control plan shall be proposed by the licensee:

(a) If conditions indicate that the plan is not suitable for controlling the roof, face, ribs, or coal or rock bursts; or

(b) If accident and injury experience at the mine indicates the plan is inadequate; the accident and injury experience at each mine shall be reviewed at least every six (6) months.

(2) An unplanned roof fall, rib fall, and coal or rock burst that occurs in the active workings shall be plotted on a mine map if it:

- (a) Is above the anchorage zone where roof bolts are used;
- (b) Impairs ventilation;
- (c) Impedes passage of persons;
- (d) Causes miners to be withdrawn from the area affected; or
- (e) Disrupts regular mining activities for more than one (1) hour.

(3) The mine map on which roof falls are plotted shall be available at the mine site for inspection by an authorized representative of the commissioner and a representative of miners at the mine.

(4) The roof control plan for each mine shall be reviewed every six (6) months by an authorized representative of the commissioner. This review shall take into consideration any falls of the roof, face and ribs and the adequacy of the support systems used at the time.

Section 19. Incorporation by Reference.

(1) "Standard Specification for Roof and Rock Bolts and Accessories", (1995 Edition), American Society for Testing and Materials (ASTM), Designation F 432-95.

(2) It may be inspected or copied at Kentucky Department of Mines and Minerals, Administration Building, 1025 Capital Center Drive, Suite 201, P.O. Box 2244, Frankfort, Kentucky 40602-2244, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) It may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, (610) 832-9500.

CHAPTER 7 TRAINING & EDUCATION

805 KAR 7:010. Definitions for 805 KAR Chapter 7.

RELATES TO: KRS 351.102, 351.103, 351.105

STATUTORY AUTHORITY: KRS 351.070(13), 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102, 351.103, and 351.106 require a person to be trained before his certification for employment in coal mines. KRS 351.070(3) requires the Office of Mine Safety and Licensing to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 351. This administrative regulation establishes the definitions for 805 KAR Chapter 7.

Section 1. Definitions.

(1) "Belt conveyor" means a belt located underground outby the loading point which moves on rollers used to carry coal and any structures, motors, or accessories used to support, protect, or increase its efficiency.

(2) "Certified Belt Examiner" means a person certified by the Office of Mine Safety and Licensing who is trained to follow examination and reporting procedures in examining the belt conveyor and surrounding conditions.

(3) "Certified person" means a person certified by the commissioner to perform particular work duties in and around a coal mine.

(4) "Experienced surface miner" means a person who has worked a minimum of forty-five (45) working days at a surface mine or on the surface area of an underground mine and has complied with all statutory and regulatory training requirements.

(5) "Experienced underground miner" means a person who has worked a minimum of forty-five (45) working days in an underground coal mine and has complied with all statutory and regulatory training requirements.

(6) "Hazard training" means instruction in awareness and avoidance of accident or injury from conditions inherent to mining provided by the licensee to visitors exposed to mine hazards.

(7) "Inexperienced surface miner" means a trainee miner who has not worked a minimum of forty-five (45) working days at a surface mine or on the surface area of an underground coal mine.

(8) "Inexperienced underground miner" means a trainee miner who has not worked a minimum of forty-five (45) working days in an underground coal mine.

(9) "Mine-specific training" means the instruction of mining relative to the distinct factors of a particular mine.

(10) "Newly employed miner" means a miner, experienced or inexperienced, employed by a licensee to work at a coal mine, who has not completed mine specific training requirements.

(11) "New work assignment" means a work duty in which a miner has not completed task training or demonstrated proficiency.

(12) "Normal work shift" means the period of time during which the miner is scheduled to work on a regular basis.

(13) "Surface coal miner" means a person at a surface mine or on the surface area of an underground mine who is engaged in an activity of mining or processing coal.

(14) "Task training" means training of miners for new work assignments.

(15) "Trainee miner" means a miner who has not worked a minimum of forty-five (45) working days at a coal mine.

(16) "Underground coal miner" means:

(a) A person working in an underground mine who is engaged in the extraction and production process including maintenance or service; or

(b) A person employed or contracted by the licensee who is regularly exposed to mining hazards.

805 KAR 7:020. Training and certification of inexperienced miners.

RELATES TO: KRS 351.102, 351.105, 351.182

STATUTORY AUTHORITY: KRS 351.106, 351.182

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals to establish a program of training for inexperienced miners according to criteria and standards determined by the Mining Board. This administrative regulation establishes a program of training for inexperienced miners.

Section 1. Drug Screening

(1) Except for an alternative testing protocol provided for post-accident victims under KRS 352.180 (5) to (7), the minimum testing protocol acceptable for the establishment of drug-free status for certifications under 805 KAR 7:020 shall be an eleven (11) panel urine test that shall include testing for the following substances:

- (a) Amphetamines;
- (b) Cannabinoids/THC;
- (c) Cocaine;
- (d) Opiates;
- (e) Phencyclidine (PCP);
- (f) Benzodiazepines;
- (g) Propoxyphene;
- (h) Buprenorphine;
- (i) Methadone;
- (j) Barbiturates; and
- (k) Synthetic narcotics.

Section 2. Training and Certification of Inexperienced Miners.

(1) A candidate desiring to obtain a permit as an inexperienced miner shall be at least eighteen (18) years of age prior to enrolling in an inexperienced miner class. The required trainee miner training shall be documented and include the following information:

- (a) Full name of person trained;
- (b) Miner identification number;
- (c) Type of mining operation;
- (d) Type of training received;
- (e) Date training completed;
- (f) Subjects taught in that training;
- (g) Signature of instructor;
- (h) Signature of miner; and
- (i) Documentation providing proof the trainee is at least eighteen (18) years of age; and
- (j) Date of signatures. The documentation shall be embossed with the instructor's seal and embossed copy shall be provided to the miner.

(2)(a) The certificate earned by completing the trainee miner training program shall be valid for twelve (12) months preceding initial employment at a mine.

(b) If employment is not obtained within twelve (12) months, annual retraining requirements shall be successfully completed each year in order to maintain the trainee miner permit.

Section 3. Training Program. The training program for inexperienced miners shall include instruction in the following courses:

- (1) Introduction to mining;
- (2) Self-rescue devices;
- (3) The statutory rights of miners and their representatives;
- (4) Authority and responsibility of supervisors;
- (5) Entering and leaving a mine, transportation, and communication;
- (6) Mine map, escapeways, emergency evacuations, barricading;
- (7) Roof or ground control and ventilation plans;
- (8) Health standards;
- (9) Clean-up and rock dusting;
- (10) Hazard recognition;
- (11) Electrical hazard;
- (12) First aid;
- (13) Mine gases and explosives;
- (14) Accident prevention; and
- (15) Mining and mine safety related issue.

805 KAR 7:030. Annual retraining.

RELATES TO: KRS 351.106

STATUTORY AUTHORITY: KRS 351.105, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.106 requires the Department of Mines and Minerals to establish an annual miner retraining program according to the criteria and standards determined by the Mining Board. This administrative regulation establishes the requirements and terms of the annual retraining program.

Section 1.

(1) A certified underground miner shall receive a minimum of sixteen (16) hours of annual retraining. At least eight (8) hours of the annual retraining shall be:

(a) Administered in a classroom;

(b) Conducted by a Kentucky certified underground mining instructor and the amount of training documented on the training form defined in Section 1(3) of this administrative regulation and embossed with the instructor's seal;

(2) The balance of the annual retraining shall be administered in segments of not less than fifteen (15) minutes. Training administered in this manner shall be provided by, or under the direct supervision of, a Kentucky certified underground mining instructor or a Kentucky certified mine foreman. A person who receives annual retraining in this manner shall be notified that each segment is being administered in satisfaction of the annual retraining requirement, and a record of each segment, including dates, duration, subject and attendees, shall be maintained at the mine site until the training form, Mine Safety and Health Administration Form 5000-23, described in Section 1(3) of this administrative regulation can be completed.

(3) Documentation of completed training shall include the following information:

(a) Full name of person trained;

(b) Miner identification number;

(c) Type of mining operation;

(d) Type of training received;

(e) Date training completed;

(f) Subjects taught in that training;

(g) Signature of instructor;

(h) Signature of miner; and

(i) Date of signatures. After completion of his training, or upon the miner leaving employment with the licensee, the miner shall receive a copy of all of his training records.

(4) The annual retraining courses shall include the following subjects:

(a) Transportation controls and communications systems;

(b) Barricading;

(c) Roof control and ventilation plans;

(d) First aid;

(e) Electrical hazards and moving equipment;

(f) Accident prevention;

(g) Self-rescue devices;

(h) Explosives;

(i) Health and safety standards; and

(j) Statutory rights of miners and their representatives.

Section 2. A person employed as a miner shall complete annual retraining within twelve (12) months from the end of the month of his most recent completed annual retraining requirement. A certified miner who has had a break in employment as an underground miner shall be eligible to work if he has successfully completed the annual retraining requirements within the last twelve (12) months.

Section 3. The licensee shall maintain verification of all miner training and certification at the mine premises.

(1) The documentation shall include:

(a) The dates the annual training sessions were conducted;

(b) The name of the miner; and

(c) The miner identification number.

(2) Licensees shall maintain documentation of the miners who are no longer employed by the licensee on the mine premises until the requirements of KRS 351.106(8) are met.

Section 4. Incorporation by Reference.

(1) The Mine Safety and Health Administration Form 5000-23, revised October 1983, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Department for Mines and Minerals, P.O. Box 2244, Frankfort, Kentucky 40602-2244, Monday through Friday, 8 a.m. to 4:30 p.m.

805 KAR 7:040. Training of newly employed miners.

RELATES TO: KRS 351.105

STATUTORY AUTHORITY: KRS 351.102, 351.105, 351.106(1)-(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals to establish a miner training program for newly employed miners according to the criteria and standards determined by the Mining Board. This administrative regulation establishes a program of training and examination for newly employed miners.

Section 1. Mine-specific Training for Newly Employed Miners.

(1) Each newly employed inexperienced miner shall receive a minimum of eight (8) hours training provided by the licensee. The training shall:

- (a) Be performed by a Kentucky certified mine foreman or mining instructor.
- (b) Apply to the mine where the miner is to be employed.

(2) Each newly employed experienced miner shall receive sufficient training provided by the licensee. The training shall:

- (a) Be performed by a Kentucky certified mine foreman or mining instructor.
- (b) Apply to the mine where the miner is to be employed.

(3) The training shall include instruction in the courses set forth in 805 KAR 7:020, Section 2(2)-(15), and shall be completed before the newly hired miner can be assigned any work duties.

(4) The licensee shall verify to the department documentation containing the following information:

- (a) Full name of person trained;
- (b) Miner identification number;
- (c) Type of mining operation;
- (d) Type of training received;
- (e) Date training completed;
- (f) Verification of eight (8) hours training in mine specifics;
- (g) Signature of miner;
- (h) Signature of instructor; and
- (i) Date of signatures. The newly employed miner shall receive a copy of this form.

(5) Upon proof by a licensee that a reemployed experienced miner has received the training established in this administrative regulation within twelve (12) months preceding reemployment at the mine, the miner shall not be required to repeat the training established in this administrative regulation.

805 KAR 7:050. Training of miners for new work assignments.

RELATES TO: KRS 351.105

STATUTORY AUTHORITY: KRS 351.102, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and KRS 351.106 require the Department of Mines and Minerals to establish, according to criteria and standards determined by the Mining Board, a miner training program that includes training of miners who receive new work assignments. This administrative regulation establishes a program of training and examination for miners who receive new work assignments.

Section 1. Task Training.

(1) A miner who receives a new work assignment shall not perform the work duties until he has completed a training program as provided in Section 1(2) of this administrative regulation if his new work assignment requires direct operation of:

- (a) Mechanical machinery;
- (b) Electrical machinery; or
- (c) Equipment in connection with:
 1. Mobile equipment operations;
 2. Blasting and drilling operations;
 3. Haulage and conveyor system operations; or
 4. Roof control.

(2) The training program for miners who receive new work assignments shall include:

- (a) Health and safety aspects and safe operating procedures for work tasks, equipment, and machinery;
- (b) Supervised practice during nonproduction;

- (c) Supervised operation during production;
- (d) New or modified machines and equipment; and
- (e) Mining and mine safety related issues.

Section 2. If a miner becomes qualified under the provisions of this administrative regulation to perform a work assignment, he shall continue to be qualified thereafter if the miner demonstrates safe operating procedures in performance of the work assignment. Each licensee shall maintain current documentation on the mine premises that the miner has demonstrated proficiency in work assignments pursuant to Section 1(1) of this administrative regulation.

Section 3. The provisions of this administrative regulation shall not be construed to alter or deprive a person of a right or duty accruing to that person by virtue of a labor-management contract.

805 KAR 7:060. Program approval.

RELATES TO: KRS 351.101, 351.102, 351.105

STATUTORY AUTHORITY: KRS 351.070 (13), KRS 351.106 (1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.070 (13) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS Chapter 351.106(1) requires the Mining Board to establish a program of training and education of inexperienced underground and surface coal miners. EO 2009-0538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet. This administrative regulation establishes the procedure for public and private entities to submit training programs to the Mining Board for approval.

Section 1. A training program for inexperienced miners shall be approved by the board if the proposed program meets the criteria and objectives of 805 KAR 7:020, and the instructors teaching the program have been certified by the Kentucky Department of Natural Resources and the U.S. Department of Labor, Mine Safety and Health Administration.

Section 2.

(1) A person who desires to provide a training program to inexperienced miners shall submit the proposed training program to the Mining Board, P.O. Box 2244, Frankfort, Kentucky 40602-2244, for review.

(2) The proposed training program shall contain the following information:

- (a) The address and location of the training facility to be used;
- (b) A description of the equipment and facilities to be used;
- (c) A list of the participating instructors;
- (d) The content areas in the training program for which each instructor shall be responsible;
- (e) The approximate number of students per class;
- (f) The dates on which the training program will be conducted;
- (g) The name and address of the person responsible for the formulation and implementation of the training program;
- (h) An outline of the proposed program showing how it meets the criteria and objectives of 805 KAR 7:020;
- (i) A list of instructional material to be used including films or programmed material and noting where the material will be used within the instructional sequence; and
- (j) A description of the instructional methods to be used throughout the program including lecture-demonstration, personalized instruction and team-teaching.

Section 3.

(1) Approval granted by the board in accordance with the provisions of this administrative regulation shall be conditional upon the practical implementation of the training program in a manner consistent with the criteria and objectives of 805 KAR 7:020.

(2) The department shall have the authority to monitor an approved program without prior notice.

805 KAR 7:070. Record maintenance.

RELATES TO: KRS 351.102, 351.105

STATUTORY AUTHORITY: KRS 351.102, 351.105, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals to establish criteria and conditions for a program of miner training and education. This administrative regulation promulgates the requirements for record maintenance necessary to administer the program.

Section 1. Record Maintenance. The licensee shall maintain at the mine premises current and accurate records of the following:

- (1) The dates annual retraining sessions were conducted and the persons who received the annual retraining on those dates;
- (2) The name of each newly-employed miner during the current calendar year, the date on which he was employed, and the date on which he received mine specific training; and
- (3) The particular work assignments which each miner is qualified to perform pursuant to 805 KAR 7:050.

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians.

RELATES TO: KRS 351.010(1)(o), 351.127, 351.182, 352.390

STATUTORY AUTHORITY: KRS 351.070(13), 351.127(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the secretary to promulgate administrative regulations necessary and suitable for the proper administration of this chapter. KRS 351.127(1) requires the department to promulgate administrative regulations establishing training requirements for mine emergency technicians. This administrative regulation establishes standards by which mine emergency technicians shall be trained, certified, and retrained.

Section 1. Definitions.

- (1) "Current", as applied to training and its certification, means the present status of training, as certified by the agency that reviews or attests to it.
- (2) "Emergency medical technician or (EMT)" means a person who is certified by the Kentucky Board of Emergency Medical Services.
- (3) "Licensee" is defined by KRS 351.010(1)(o).
- (4) "Mine emergency technician or (MET)" means a person certified by the Office of Mine Safety and Licensing.
- (5) "OMSL" means the Office of Mine Safety and Licensing

Section 2. MET Certification Requirements.

- (1) Each applicant for certification as a MET shall:
 - (a) Hold a surface or underground miner's certification in the Commonwealth of Kentucky;
 - (b) Successfully complete the standard program of training and education established by this administrative regulation and a series of written and practical skills examinations prescribed by the OMSL in accordance with 805 KAR Chapter 7;
 - (c) Be eighteen (18) years of age or older; and
 - (d) Understand and be able to read, speak, and write the English language.
- (2) A Kentucky certified miner who is an emergency medical technician with a current CPR course completion card may apply for initial certification as a mine emergency technician.

Section 3. MET Training Course Requirements.

- (1) The training course curriculum for certification as a MET shall include:
 - (a) Instruction in cardiopulmonary resuscitation (CPR) and adult one (1) and two (2) rescuer CPR, approved by at least one (1) of the following organizations:
 1. The American Red Cross
 2. The American Safety and Health Institute
 3. The American Heart Association; or
 4. The National Safety Council; and
 - (b) The following subjects from textbooks as prescribed by the Office of Mine Safety and Licensing:
 1. Roles and Responsibilities;
 2. The human body;
 3. Patient Assessment;
 4. Airway and Pulmonary Resuscitation;
 5. Cardiac Emergency;
 6. Breathing aids and oxygen therapy;
 7. Bleeding and shock;
 8. Soft tissue and internal organs;
 9. Upper and lower extremity muscular and skeletal injuries;

10. Skull and spine injuries;
11. Chest, abdominal and genital injuries;
12. Medical emergency;
13. Hazardous materials;
14. Environmental and electrical emergencies;
15. Special patterns and behavioral problems;
16. Disaster management;
17. Lifting and moving;
18. Extrications;
19. Infection Control; and
20. Burns

(2) The training course shall also:

(a) Be not less than forty (40) hours in duration;

(b) Be taught by an instructor certified by the OMSL in accordance with 805 KAR Chapter 7;

(c) Include equipment, text and audio visual and other materials approved by the OMSL in accordance with 805 KAR Chapter 7 as adequate to train METs.

(d) Be limited to thirty (30) students per instructor; and

(e) Be conducted in a training facility approved by the OMSL in accordance with 805 KAR Chapter 7 as adequate to train METs.

Section 4. MET Certification Examination.

(1) When the MET applicant takes the MET certification examination, applicant shall provide verification on a Certificate of Training Form, Federal Form 5000-23, that the applicant has successfully completed the standard program of MET training and education prescribed by the OMSL, in accordance with 805 KAR Chapter 7.

(2) The Certificate of Training Form, Federal Form 5000-23, shall be signed by the MET applicant, be embossed with the MET instructor certification number, and signed by the MET instructor who administered the MET course to the applicant.

(3) The initial MET certification exam, shall be taken within sixty (60) days of completion of the MET training course required in Section 3 of this administrative regulation.

(4) The MET certification examination, shall be prescribed and administered by OMSL, in accordance with 805 KAR Chapter 7 and shall consist of the following parts:

(a) A written examination with an overall grade of eighty (80) percent shall be required to pass; and

(b) A practical examination, which shall consist of the following two (2) parts:

1.a. The first part shall consist of mandatory stations in which the applicant shall be tested on one (1) or more required skills.

b. The applicant shall demonstrate proficiency in all mandatory stations.

2.a. The second part shall consist of "wild card" stations in which one (1) or more skills shall be tested.

b. The applicant shall randomly draw the skills on which he shall be tested when the examination is given.

(5)(a) If the applicant for certification fails to pass the written or practical portion of the examination, he shall be permitted one (1) opportunity to retake the portion or portions failed.

(b) The reexamination shall be conducted within sixty (60) days of the initial examination date.

(6) If the applicant for certification fails to pass the written or practical portion after reexamination, he shall retake the entire MET training course before being eligible for subsequent examination.

Section 5. Certification Renewal Continuing Education Requirements.

(1)(a) For a MET to remain certified, the applicant shall receive continuing education or retraining in a period not to exceed one (1) year from the last day of the month in which the most current retraining was completed.

(b) A MET shall earn at least eight (8) continuing education or retraining hours annually, with at least half being devoted to practical skills in a structured instructional setting.

(2) Continuing education and retraining courses for mine emergency technicians shall be taught by certified MET instructors.

(3)(a) A MET shall maintain a current course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR.

(b) The card shall be presented to the MET instructor at the time of the MET recertification.

(4) An applicant for recertification shall receive credit for completion of continuing education/retraining hours in subjects required by the OMSL's MET curriculum listed in Section 3 of this administrative regulation.

(5) Each subject or training course for which credit is claimed shall be countersigned by the MET instructor teaching the subject or course.

(6) The applicant for recertification shall submit evidence of successful completion of instruction in at least four (4) different subject areas of the approved MET curriculum, with a maximum of two (2) hours per subject area.

(7)(a) The MET shall submit to an OMSL district office, a copy of the Mine Emergency Technician Recertification Form, EF-16, within thirty (30) days of the MET retraining completion dates if the eight (8) hours training was received from multiple locations.

(b) The MET recertification form, EF-16, shall be signed by the MET, be embossed with the MET instructor certification number, and signed by the MET instructor who administered the continuing education claimed for purposes of recertification.

(c) A copy of the Mine Emergency Technician recertification form, EF-16, shall be maintained at the mine site.

Section 6. Expiration of Certification.

(1) A MET certification shall expire one (1) year from the last day of the month in which the certification was issued unless the person holding the MET certification satisfies the recertification continuing education requirements detailed in Section 5(1) of this administrative regulation.

(2) Upon the expiration of the MET certification, the holder shall not function in the capacity of a mine emergency technician.

Section 7. Reinstatement of Certification. A former MET may reinstate an expired certification as follows:

(1) If the certificate has expired within the past one (1) year, the applicant may apply for certification reinstatement by:

(a) Successfully completing eight (8) hours of MET training and reeducation classes as established in Section 5(1) through (7) of this administrative regulation;

(b) Providing a copy of a current CPR certification as established in Section 3(1)(a) of this administrative regulation; and

(c) Submitting proof of prior MET certification.

(2) If the certificate has been expired for more than one (1) year but less than three (3) years, the applicant may apply for certification reinstatement by:

(a) Successfully complete eight (8) hours of MET training and reeducation classes as established in Section 5(1) through (7) of this administrative regulation;

(b) Providing a copy of current CPR certification as established in Section 3 of this administrative regulation;

(c) Submitting proof, in accordance with KRS 351.182 that he she is drug and alcohol free;

(d) Submitting proof of prior MET certification; and

(e) Completing the initial MET certification examination requirement established in Section 4(4) of this administrative regulation.

Section 8. Designation of a MET.

(1) A person designated by the licensee to function as a MET in an underground coal mine shall:

(a) Hold an underground miner's certification in the Commonwealth of Kentucky;

(b) Hold a mine emergency technician certification from the OMSL; and

(c) Maintain verification of MET certification at the mine site.

(2) A person designated by the licensee to function as a MET at a surface coal mine shall:

(a) Hold a surface miner's certification in the Commonwealth of Kentucky;

(b) Hold a mine emergency technician certification from the OMSL; and

(c) Maintain verification of MET certification at the mine site.

(3) A certified MET instructor designated by the licensee to function as a mine emergency technician shall:

(a) Meet the requirements of subsections (1)(a) or (2)(a) of this section;

(b) Maintain verification of his MET certification at the mine site; and

1. Teach an eight (8) hour MET retraining class during his period of certification; or

2. Meet the recertification continuing education requirements established in Section 5 of this administrative regulation.

Section 9. MET Instructor Certification Requirements. MET instructors, in addition to being certified as a MET, shall:

(a) Hold a mine instructor certification issued by the OMSL; and

- (b) Hold a current instructor card to teach adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR issued by at least one of the organizations listed in Section 3(1)(a) of this administrative regulation; or
- (2) Be an EMT instructor who is also qualified in accordance with subsections (1) of this section.

Section 10. Responsibilities of the MET Instructor. The MET instructor shall:

- (1) Utilize equipment, texts, audio-visual and other materials deemed appropriate by the department;
- (2) Notify the district office of the OMSL prior to his commencement of MET classes;
- (3) Verify on a Mine Safety and Health Administration Certificate of Training Form, Federal Form 5000-23 that the MET applicant has successfully completed the standard MET program of training and education prescribed by the OMSL in accordance with 805 KAR Chapter 7;
- (4) Verify on a Mine Emergency Technician Recertification Form EF-16 that the MET has successfully completed each subject or training course for which credit shall be approved;
- (5) Immediately upon completion of initial training or continuing education courses, the completed form, Mine Emergency Technician Recertification Form, EF-16, shall be provided to the student; and
- (6)(a) Shall submit copies of all Mine Emergency Technician Recertification form EF-16, forms within thirty (30) days of MET retraining completion dates, to the Office of Mine Safety and Licensing.
- (b) The Mine Emergency Technician Recertification form EF-16, shall be signed by the MET, embossed with the MET instructor certification number, and signed by the MET instructor who administered the continuing education claimed for purposes of recertification.

Section 11. Denial, Revocation, and Suspension of MET Certification.

- (1) The Mine Safety Review Commission may revoke, suspend, or probate the MET certification or MET instructor certification of a person who the commission determines, based upon allegations substantiated by the OMSL, has responded or acted inappropriately in the capacity of a mine emergency technician or MET instructor by failing to:
 - (a) Follow appropriate standards of care in the management of a patient;
 - (b) Administer treatment in a responsible manner in accordance with the mine emergency technicians or MET instructors level of certification;
 - (c) Maintain patient confidentiality;
 - (d) Respond timely to an emergency
- (2) All actions taken by the commission regarding the revocation, suspension, or probation of a MET certification or MET instructor certification shall be so taken in accordance with KRS 352.390.

Section 12. Material Incorporated by Reference.

- (1) The following material is incorporated by reference:
 - (a) The Mine Safety and Health Administration certification of training form 500-23, January 1999; and
 - (b) Mine Emergency Technician Recertification Form EF-16, April 2006.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Office of Mine Safety and Licensing, 1025 Capital Center Drive, Suite 201, P.O. Box 2244, Frankfort, KY 40602-2244.

805 KAR 7:090. Hazard training.

RELATES TO: KRS 351.106, 352.350

STATUTORY AUTHORITY: KRS 351.070, 351.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.106 requires the Department of Mines and Minerals to establish safety programs for miners and mine sites. This administrative regulation establishes a training program for visitors of a mine site.

Section 1. Surface Hazard Training.

- (1) Surface hazard training shall be provided by the licensee to visitors exposed to mine surface hazards.
- (2) Hazard training shall include:
 - (a) Hazard recognition and avoidance;
 - (b) Emergency procedures; and
 - (c) Mining and mine safety related issues.

Section 2. Underground Hazard Training.

- (1) Underground hazard training shall be provided by the licensee or his authorized representative at the mine for visitors exposed to mine hazards in underground mines.

(2) Persons required to take hazard training shall be accompanied at all times while underground by an experienced miner employed at the mine.

(3) Hazard training shall include:

- (a) Hazard recognition and avoidance;
- (b) Emergency and evacuation procedure;
- (c) Use of a self-rescuer and a respiratory device; and
- (d) Mining and mine safety related issues.

Section 3. Documentation.

(1) The training required for a visitor of a surface or underground mine shall be:

- (a) Documented; and
 - (b) Valid for twelve (12) months.
- (2) The documentation shall enable the visitor to revisit the mine where he received training.

805 KAR 7:100. Requirements for Belt Examiner.

RELATES TO: KRS 352.340, 351.106

STATUTORY AUTHORITY: KRS 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.340 provides for examinations of belts to be conducted by a certified belt examiner or a certified mine foreman. KRS 351.106 requires the Commissioner of the Department for Natural Resources to promulgate administrative regulations necessary to establish a program to implement the conduct of examinations to test each applicant's knowledge and understanding of the instruction.

Section 1. Belt Examiner Certification Requirements.

(1) Each applicant for certification as a belt examiner shall:

- (a) Hold a Kentucky underground miner's certification;
- (b) Have a total of three (3) years practical underground mining experience;
- (c) Successfully complete a written and practical skills examination prescribed by the office; and
- (d) Understand and be able to read, speak and write the English language.

Section 2. Training Course Requirements.

(1) The training course for certification as a belt examiner shall include instruction in the following topics:

- (a) Roof control practices;
- (b) Mine ventilation;
- (c) Mine gases and instruments;
- (d) Fire hazards, including fire fighting and evacuation plans;
- (e) Inspection and reporting procedures; and
- (f) Use of an anemometer, methane detector, and oxygen detecting devices.

(2) The training course shall also be:

- (a) Not less than six (6) hours in duration;
- (b) Taught by a Kentucky certified instructor; and
- (c) Limited to thirty (30) students per instructor.

Section 3. Belt Examiner Certification Examination.

(1) At the time of taking the belt examiner certification examination, the applicant shall provide proof of drug and alcohol-free status as set forth in KRS Chapter 351.

(2) The belt examiner certification examination shall be prescribed and administered by the office and shall consist of the following two (2) parts:

- (a) Written, an overall grade of eighty (80) percent shall be required to pass; and
- (b) Practical, demonstrating proficiency with an anemometer, methane detector, and oxygen detecting devices.

(3) If the applicant fails either to pass the written test or to demonstrate proficiency during the practical portion of the test, he shall be permitted one (1) opportunity to retake the portion or portions failed. The reexamination shall be conducted within thirty (30) days of the initial exam date.

(4) If the applicant for certification fails to pass the written or practical portion after reexamination, he shall complete the belt examiner training course before being eligible for subsequent examination.

Notes: _

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CHAPTER 8 SANCTIONS AND PENALTIES

805 KAR 8:010. Definitions for 805 KAR Chapter 8.

RELATES TO: KRS 351.025, 351.1041, 351.194

STATUTORY AUTHORITY: KRS 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.025(1) requires the Department of Mines and Minerals to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against certified and noncertified personnel and owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. KRS 351.025(2) requires the department to promulgate administrative regulations that establish comprehensive criteria for the imposition of penalties against licensed premises if an owner or part-owner intentionally orders mine safety laws to be violated that place miners in imminent danger of serious injury or death. KRS 351.070(13) authorizes the department to promulgate administrative regulations necessary to properly administer KRS 351.010 to 351.9901. This administrative regulation establishes the definitions of terms used in 805 KAR 8:010 to 805 KAR 8:060.

Section 1. Definitions.

(1) "Certified mine foreman" or "foreman" means any person who has procured a certificate from the department to perform the work duties of a mine foreman or assistant mine foreman, either underground or surface.

(2) "Certified miner" or "certified personnel" means a miner, mine foreman, assistant mine foreman, electrician, shotfirer, underground or surface mining instructor, or mine emergency technician (MET).

(3) "Commission" means the Kentucky Mine Safety Review Commission.

(4) "Equivalent to the value of the wages received" means the average daily wages received by a noncertified person, during a specified period to be determined by the Mine Safety Review Commission, multiplied by the number of days for which the noncertified person has been fined.

(5) "First offense" means an individual's or entity's first intentional violation of, or order to violate, a mine safety law which places a miner in imminent danger of serious injury or death, as adjudicated by the Kentucky Mine Safety Review Commission.

(6) "Gross value of the production of the licensed premises" means the average sale price per ton of coal multiplied by the number of tons of coal produced at the mine where the first or subsequent offense occurred, during a specified period to be determined by the Mine Safety Review Commission, multiplied by the number of days for which the licensed premises has been fined.

(7) "Imminent danger" is defined by KRS 352.010(1)(p).

(8) "Intentional" or "intentionally" means, with respect to conduct or to a result, that a person's conscious objective is to engage in that conduct or cause that result.

(9) "Licensed premises" means any entity that has procured a license from the department to operate a coal mine.

(10) "Noncertified personnel" means any person in or around a coal mine who has not procured a certificate from the department to perform particular work duties.

(11) "Part owner" means a person or other entity with any ownership interest in a licensed premises, with the exception of persons who own less than a one (1) percent share of publicly-traded stock.

(12) "Serious injury" means an injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention greater than first aid, such as surgery or hospitalization.

(13) "Subsequent offense" means any intentional violation of, or order to violate, a mine safety law which places a miner in imminent danger of serious injury or death, as adjudicated by the Kentucky Mine Safety Review Commission, and which occurs after the individual's or entity's first offense.

(14) "Willful" means voluntary and intentional.

805 KAR 8:030. Criteria for the imposition and enforcement of sanctions against certified miners.

RELATES TO: KRS 351.1041, 351.120, 351.194, 352.010-352.550

STATUTORY AUTHORITY: KRS 351.025(1)(a), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Commissioner of the Department of Mines and Minerals to promulgate administrative regulations he deems necessary and suitable for the proper administration of KRS 351.090 to 351.9901. KRS 351.025(1)(a) requires the Department of Mines and Minerals to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions

against certified miners whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the revocation, suspension, or probation of a miner's certificate upon an adjudication by the Mine Safety Review Commission that a miner has committed this type of violation.

Section 1.

(1) If a certified miner commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may revoke or suspend the miner's certificate for a period of time to be determined at the discretion of the commission, pursuant to KRS 351.194(5) and (6), or it may probate the miner's certificate for a period of no greater than ten (10) working days.

(2) If a certified miner's certificate is revoked pursuant to subsection (1) of this section, the miner may apply to the Kentucky Mining Board for the reinstatement of his certificate, after the revocation period has ended, and after he has retaken and passed the requisite examination required for the certification. The Mining Board may grant or deny the application.

(3) If a certified miner's certificate is suspended, pursuant to subsection (1) of this section, it shall be automatically reinstated at the end of the specified period of suspension. A suspension imposed by the commission may be for nonconsecutive days.

(4) If a certified miner is placed on probation, the Mine Safety Review Commission may impose the terms of the probation, and it may impose penalties for the violation of the terms of probation. If the certified miner satisfies the terms of his probation, the probation shall automatically expire at the end of the probationary period.

(5) If a certified miner, who has been adjudicated by the Mine Safety Review Commission to have committed a first or subsequent offense, holds more than one (1) certificate, the commission may revoke, suspend, or probate some or all of the miner's certificates.

(6) If a certified miner, who has been adjudicated by the Mine Safety Review Commission to have committed a first or subsequent offense, is an hourly employee and not a foreman, in determining the penalty for the miner, the commission shall determine and state in its decision whether the miner was ordered by a foreman or other superior to violate the mine safety law in question, or whether the miner acted solely on his own accord, if the miner raises that issue. If the commission determines that the miner was ordered by a foreman to violate the mine safety law, the commission shall state whether and why that fact mitigated the severity of the penalty it imposed.

805 KAR 8:040. Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises.

RELATES TO: KRS 351.1041, 351.120, 351.194, 352.010-352.550

STATUTORY AUTHORITY: KRS 351.025(1)(b), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Commissioner of the Department of Mines and Minerals to promulgate administrative regulations he deems necessary and suitable for the proper administration of KRS 351.090 to 351.9901. KRS 351.025(1)(b) requires the Department of Mines and Minerals to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed this type of violation.

Section 1.

(1) If an owner or part-owner of a licensed premises commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$2,500 and not more than \$10,000.

(2) If an owner or part-owner of a licensed premises applies for a foreman's certificate, an inspector's certificate, or any other certificate under Kentucky's mining laws, subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Kentucky Mining Board shall consider that adverse adjudication during its consideration of the individual's application. The Mining Board may grant or deny the application.

(3) If an owner or part-owner of a licensed premises applies for a license to operate a coal mine in the Commonwealth of Kentucky subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of

serious injury or death, the Kentucky Department of Mines and Minerals shall consider that adverse adjudication during its consideration of the application. The department may grant or deny the application.

(4) If an owner or part-owner of a licensed premises commits a second offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$5,000 and not more than \$10,000.

(5) If an owner or part-owner of a licensed premises applies for a foreman's certificate, an inspector's certificate, or any other certificate under Kentucky's mining laws, subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Kentucky Mining Board shall consider that adverse adjudication during its consideration of the individual's application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to be certified in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mining Board and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The Mining Board may grant or deny the application.

(6) If an owner or part-owner of a licensed premises applies for a license to operate a coal mine in the Commonwealth of Kentucky subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Kentucky Department of Mines and Minerals shall consider that adverse adjudication during its consideration of the application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to hold a mine license in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the department and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The department may grant or deny the application.

(7) If an owner or part-owner of a licensed premises commits a third offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary penalty against the owner or part-owner of not less than \$7,500 and not more than \$10,000.

(8) Upon the adjudication by the Mine Safety Review Commission of a third offense committed by an owner or part-owner of a licensed premises, whether those offenses were committed at the same mine or at more than one (1) mine, the owner or part-owner shall not be eligible to obtain or hold any mine certificate or mine license within the Commonwealth of Kentucky.

(9) Penalties against owners or part-owners of licensed premises, imposed pursuant to subsection (1), (4), or (7) of this section, may only be imposed for the individual acts of the owner or part-owner, not for the acts of another.

(10) If an owner or part-owner of a licensed premises is also a certified miner at the time of committing his first or second offense, the Mine Safety Review Commission may additionally impose on that owner or part-owner any nonmonetary penalties applicable to certified miners pursuant to 805 KAR 8:030.

805 KAR 8:050. Criteria for the imposition and enforcement of sanctions against noncertified personnel.

RELATES TO: KRS 351.1041, 351.194, 352.010-352.550

STATUTORY AUTHORITY: KRS 351.025(1)(c), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Commissioner of the Department of Mines and Minerals to promulgate administrative regulations he deems necessary and suitable for the proper administration of KRS 351.090 to 351.9901. KRS 351.025(1)(c) requires the Department of Mines and Minerals to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against noncertified personnel whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary fines and other consequences upon an adjudication by the Mine Safety Review Commission that a noncertified person has committed this type of violation.

Section 1.

(1) If a noncertified person commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary fine against the noncertified person equivalent to the value of the wages received by that person for up to ten (10) working days.

(2) If a noncertified person applies for a foreman's certificate, an inspector's certificate, or any other certificate under Kentucky's mining laws, subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Kentucky Mining Board shall consider that adverse adjudication during its consideration of the individual's application. The Mining Board may grant or deny the application.

(3) If a noncertified person applies for a foreman's certificate, an inspector's certificate, or any other certificate under Kentucky's mining laws, subsequent to a second offense adjudication by the Mine Safety Review Commission that

he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Kentucky Mining Board shall consider that adverse adjudication during its consideration of the individual's application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to be certified in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mining Board and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The Mining Board may grant or deny the application.

(4) Upon the adjudication by the Mine Safety Review Commission of a third offense committed by a noncertified person, that person shall not be eligible to obtain or hold any mine certification within the Commonwealth of Kentucky.

(5) A noncertified person who is also an owner or part-owner of a licensed premises shall be penalized under the provisions applicable to owners and part-owners, pursuant to 805 KAR 8:040, rather than under the provisions applicable to noncertified personnel, pursuant to subsections (1) through (4) of this section. (28 Ky.R. 2131; Am. 29 Ky.R. 715; eff. 9-16-02.)

805 KAR 8:060 Criteria for the imposition and enforcement of sanctions against licensed premises.

RELATES TO: KRS 351.010(1)(m), 351.025, 351.1041, 351.175, 351.194, 352.010-352.550

STATUTORY AUTHORITY: KRS 351.025(2), 351.070(13), 351.070(15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.025(2) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission's imposition of penalties against licensed premises for violations of Kentucky mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) requires the Cabinet to promulgate administrative regulations providing for the manner and method of assessing penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions and mine ventilation plans that could lead to imminent danger or serious physical injury. EO 2009-0538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet. This administrative regulation establishes the criteria for the revocation, suspension, or probation of a mine's license, and the imposition of civil monetary penalties against a licensed premises.

Section 1. Definitions.

(1) "Commission" means the Mine Safety Review Commission

(2) "First offense" means the first violation by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

- (a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);
- (b) The violation of a roof control plan, mine seal construction plans or mine ventilation plan; or
- (c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.

(3) "Licensed facility" or "licensed premises" means "licensee", as defined by KRS 351.010(1)(o) and 352.010(1)(s).

(4) "Mine ventilation plan" means the ventilation plan, including any revisions and any revision to the mine ventilation plan approved by the United States Mine Safety and Health Administration.

(5) "Related successor" means an entity that obtains a license for a mine, if that entity is linked by common legal or equitable ownership through one (1) or more owners, to a previous licensee for that same mine or location.

(6) "Second offense" means the second violation by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including;

- (a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);
- (b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan;
- (c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury

(7) "Subsequent offense" means a violation beyond the third offense by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including;

- (a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);
- (b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan;
- (c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.

(8) "Third offense" means the third violation by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

- (a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);
- (b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan; or

- (c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.
- (9) “Unsafe working conditions” means a condition that involves a hazard that:
 - (a) Can reasonably be expected to cause a miner serious injury or death;
 - (b) A foreman, superintendent or mine management was aware of or should have been aware of; and
 - (c) Was allowed to exist, without being corrected or addressed.

Section 2. Criteria for the Imposition and Enforcement of Sanctions Against Licensed Premises for Violations of Mine Safety Laws.

(1)(a) If the Commission determines, pursuant to KRS 351.194, that a licensed premises has committed a first offense, the commission may place the licensed premises on probation for a period of time to be determined by the commission, pursuant to KRS 351.194(5), which shall be in proportion to the seriousness of the violations and the facts of the case.

(b) The commission may also impose a civil monetary penalty against the licensed premises, in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(2)(a) If a licensed premises is placed on probation for a first offense violation pursuant to subsection (1) of this section, the commission may impose the terms of the probation, and it may impose penalties for the violation of the terms of probation, including the suspension or revocation of the mine’s license.

(b) If the licensed premises satisfies the terms of its probation, the probation shall automatically expire at the end of the probationary period.

(3)(a) The department may file charges against a licensed premises for any alleged violation of its probationary terms.

(b) Hearings regarding the allegations shall be conducted by the Kentucky Mine Safety Review Commission, pursuant to 825 KAR 1:020.

(4)(a) If the Commission determines, pursuant to KRS 351.194, that a licensed premises has committed a second offense, the commission may suspend or revoke the mine’s license for a period of not less than two (2) calendar years, up to and including revocation, pursuant to KRS 351.194(5) and (6), and in proportion to the seriousness of the violations and the facts of the case.

(b) The commission may also impose a civil monetary penalty against the licensed premises, in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(5)(a) If a mine license is suspended for a second offense violation pursuant to subsection (4) of this section, it shall be automatically reinstated at the end of the period of suspension.

(b) If the mine’s license is revoked, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(c) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with orders of the Mine Safety Review Commission and KRS 351.175.

(6)(a) Upon the adjudication by the Mine Safety Review Commission of a third offense by a licensed premises, the commission shall revoke the mine’s license for a period of not less than three (3) calendar years, up to and including a permanent revocation without possibility of reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the seriousness of the violations and the facts of the case.

(b) If the revocation is for a period of less than a permanent revocation without possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(c) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with orders of the Mine Safety Review Commission and KRS 351.175.

(d) If a third offense is committed by a licensed premises, the commission may also impose a civil monetary penalty against the licensed premises not, in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(7)(a) If a licensed premises commits a violation of a mine safety law that results in the death of a miner, whether the violation is first or subsequent offense, the Mine Safety Review Commission may suspend or revoke the mine’s license, including permanent revocation of the license without the possibility for reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the seriousness of the violations and the facts of the case.

(b) If the commission suspends the mine’s license, it shall be automatically reinstated at the end of the period of suspension.

(c) If the commission revokes the mine’s license for a period of less than a permanent revocation without possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(d) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with Orders of the Mine Safety Review Commission and KRS 351.175.

(e) The commission may also impose a civil monetary penalty against the licensed premises, in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(8) If a licensed premises that has committed one (1) or more violations pursuant to subsection (1), (4), (6), or (7) of this section is subsequently sold or goes out of business, penalties imposed on that licensed premises for those violations shall be imposed upon an entity that is determined by the commission to be a related successor to the licensed premises in question, after a hearing conducted pursuant to KRS 351.194.

Section 3. Criteria for the Imposition and Enforcement of Civil Penalties Against Licensed Facilities for Violations of Roof Control Plans, Mine Seal Construction Plans, Unsafe Working Conditions or Mine Ventilation Plans.

(1) Amount of penalty. The commissioner or the commissioner's designee shall assess monetary penalties to a licensed facility that has been issued a noncompliance or closure order for a violation of the provisions of KRS Chapters 351 and 352 relating to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that may lead to imminent danger or serious physical injury, or have resulted in serious physical injury or death, as follows:

(a) If the licensed facility has not had previous violations during the previous twenty-four (24) months relating to roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plans that may lead to imminent danger or serious physical injury, the penalty shall not be more than \$2,500;

(b) If the licensed facility has had one prior offense during the previous twenty-four (24) months relating to the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in the assessment of a penalty pursuant to this section, the penalty for a violation that may lead to imminent danger or serious physical injury shall not be more than \$4,000;

(c) If the licensed facility has had two (2) or more offenses relating to a violation during the previous twenty-four (24) months of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in an assessment of a penalty pursuant to this section, the penalty for a violation that may lead to imminent danger or serious physical injury shall not be more than \$5,000;

(d) If the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan results in the serious physical injury or death of a miner, the penalty shall be \$5,000, even if the licensed facility has been previously cited for the violation or assessed a penalty pursuant to this section; and

(e) Factors to be considered. In determining the amount of the penalty to be assessed, consideration shall be given to the following:

1. The licensed premises' cooperation with investigators;
2. The severity of the harm done, such as whether the violation resulted in:
 - a. Death;
 - b. Serious physical injury; or
 - c. The placement of an individual in imminent harm;
3. The licensed premises' acceptance of responsibility for its actions;
4. The licensed premises' history of violations;
5. Mitigating circumstances; and
6. Aggravating circumstances.

(2) Notification. The commissioner or the commissioner's designee shall notify a licensed facility that has been assessed a penalty pursuant to this section of the amount of the assessment.

(3) Service.

(a) The notice of proposed penalty assessment shall be served on the licensed facility within thirty (30) days after the proposed penalty assessment is completed.

(b) Failure to serve the proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of the assessment unless the licensee proves actual and substantial prejudice as a result of the delay.

(c) Service shall be made by one (1) or more of the following methods:

1.a. The commissioner or the commissioner's designee may place a copy of the notice of proposed assessment in an envelope and address the envelope to the licensed facility at the address provided by the licensee to the Office of Mine Safety and Licensing in its most recent license application.

b. The Office of Mine Safety and Licensing shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.

c. The Office of Mine Safety and Licensing shall maintain a record of each assessment and shall include the fact of mailing and the return receipt, if received.

d. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

e. Service by certified mail shall be complete upon delivery of the envelope, upon acceptance by any person eighteen (18) years of age or older at the licensee address, upon refusal to accept by any person at the licensee address, upon the United States Postal Service's inability to deliver the assessment if properly addressed to the licensee, or upon failure to claim the assessment prior to its return to the Office of Mine Safety and Licensing by the United States Postal Service.

f. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the assessment; or

2. The commissioner or the commissioner's designee may cause the assessment, with necessary copies, to be transferred for service to a person authorized by the Secretary who shall serve the assessment, and the return thereon shall be proof of the time and manner of service.

(4) Options of the licensed facility issued a notice of proposed assessment.

(a) Waiver.

1. A licensed facility that is issued a notice of proposed assessment may choose not to contest the assessment.

2. Failure to file a petition pursuant to paragraph (b) of this subsection shall be considered a waiver.

3. A final order shall be entered by the Mine Safety Review Commission finding that:

a. The licensed facility has waived its right to an administrative hearing on the amount of the proposed assessment;

b. The fact of the violation cited in the noncompliance or closure order is deemed admitted;

c. The proposed penalty is due and payable within thirty (30) days after the entry of the final order; and

d. The violation is a first, second, third or subsequent offense.

(b) Petition for administrative hearing. The licensed facility may contest the proposed assessment and fact of violation by submitting a petition for administrative hearing within thirty (30) days of the receipt of the assessment in accordance with 825 KAR 1:020.

(5) This section of this administrative regulation shall be construed to impair or contravene the Office of Mine Safety and Licensing's authority to seek sanctions pursuant to Section 2 of this administrative regulation or to prevent the Mine Safety Review Commission from imposing the sanctions in Section 2 of this administrative regulation in addition to the monetary penalties assessed pursuant to this Section.

Section 4. Criteria for the imposition and enforcement of sanctions against licensed facilities for failure to comply with the requirements for reporting an accident.

(1) General.

(a) If the superintendent, mine manager, mine foreman, or a mine foreman's designee fails to comply with the reporting requirements established in KRS 352.180(1), the Mine Safety Review Commission may revoke, suspend or probate the mine license for a period of time to be determined by the commission, pursuant to KRS 351.194(5), and in proportion to the seriousness of the violations and the facts of the case.

(b) The commission shall also assess a civil monetary penalty against the licensed premises in accordance with KRS 352.180(4).

(2) Point system for computing the civil monetary penalty. The Mine Safety Review Commission shall apply the point system described in this subsection to evidence produced by the Office of Mine Safety and Licensing necessary to determine the amount of civil monetary penalty to assess against the licensee pursuant to this section. Points shall be assigned as follows:

(a) Appropriateness of the penalty.

1. Up to fifteen (15) points shall be assigned for the size of the mine.

2. The size of the mine shall be based on the tonnage produced from the mine in the previous calendar year, or in the case of a mine opened or owned less than one (1) full calendar year, the tonnage prorated to an annual basis.

3. Points shall be assigned as follows:

a. 0-300,000 tons, zero (0) points;

b. 300,000-500,000 tons, five (5) points;

c. 500,000-1 million tons, ten (10) points;

d. Over 1 million tons, fifteen (15) points;

(b) History of previous violations.

1. Up to twenty (20) points shall be assigned based on the history of violations at the mine, cited against the licensee during the preceding twenty-four (24) month period.

2. Points shall be assigned as follows:

a. 1-5 previous violations, zero points.

b. 6-10 previous violations, five (5) points.

c. 11-20 previous violations, ten (10) points.

- d. 21-30 previous violations, fifteen (15) points.
- e. Over 30 previous violations, twenty (20) points.

(c) Negligence.

1. Up to twenty-five (25) points shall be assigned based on the degree of negligence the licensee exhibited in failing to report the accident.

2. Points shall be assigned as follows:

a. No negligence. There shall not be negligence on the part of the licensee if it exercised diligence and could not have prevented the failure to comply with the reporting requirements. Zero points shall be assigned for no negligence;

b. Negligence. There shall be negligence if the licensee has mitigating circumstances for its failure to comply with the reporting requirements. Fifteen (15) points shall be assigned for negligence; or

c. Reckless disregard. There shall be reckless disregard if the licensee exhibits the absence of the slightest degree of care in complying with the reporting requirements. Twenty-five (25) points shall be assigned for reckless disregard;

(d) Gravity. Gravity shall be the severity of the accident and whether persons were at risk of serious physical injury or death based on the failure to comply with the reporting requirements.

1. A total of thirty (30) points shall be assigned for gravity.

2. Points shall be assigned as follows:

a. Severity. Up to twenty (20) points shall be assigned as follows for the severity of injuries:

(i) No serious physical injury occurred, zero points.

(ii) A serious physical injury occurred, ten (10) points; or

(iii) A fatality occurred, twenty (20) points; and

b. Persons at risk of serious physical injury or death. Up to ten (10) points shall be assigned based on whether persons were at risk of serious physical injury or death by the failure to comply with the reporting requirements and points shall be assigned as follows:

(i) No personnel were at risk, zero points; or

(ii) Person(s) were at risk, ten (10) points.

(3) Determination of amount of penalty. The Mine Safety Review commission shall determine the amount of penalty by converting the total number of points assigned under subsection (2) of this section to a dollar amount, according to the schedule in the following table:

Points	Amount
0	\$10,000
5	\$15,000
10	\$20,000
15	\$25,000
20	\$30,000
25	\$35,000
30	\$40,000
35	\$45,000
40	\$50,000
45	\$55,000
50	\$60,000
55	\$65,000
60	\$70,000
65	\$75,000
70	\$80,000
75	\$85,000
80	\$90,000
85	\$95,000
90	\$100,000

(4) Waiver of use of point system to determine civil penalty.

(a)1. The Mine Safety Review Commission may waive the use of the point system contained in Section 4(2) of this administrative regulation to set the civil penalty, if it determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.

2. The basis for every waiver shall be fully explained and documented in the record of the case.

(b)1. If the commission waives the use of the point system, it shall use the criteria established in KRS 351.194(7) to determine the appropriate penalty.

2. If the commission has elected to waive the use of the point system, it shall give a written explanation for the basis for the assessment made in its Final Order.

Section 5. Incorporation by Reference.

(1) "Notice of Proposed Assessment," July 12, 2006, OMSL Form No. NPA-1 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

825 KAR CHAPTER 1
KENTUCKY MINE SAFETY REVIEW

825 KAR 1:020. Administrative hearings procedures.

RELATES TO: KRS Chapter 13B, 351.025(1), (2), (5), 351.070(15), 351.1041(1), (7), (8), 351.105(11), 351.120, 351.184, 351.194.

STATUTORY AUTHORITY: KRS 351.194(1), KRS 351.025(5).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.194(1) and KRS 351.025(5) require the Mine Safety Review Commission to promulgate administrative regulations to establish administrative hearing and review procedures in accordance with KRS Chapter 13B. This administrative regulation supplements the provisions of KRS Chapter 13B by establishing procedures for the filing, evaluation, and disposition of complaints and petitions of appeal.

Section 1. The provisions of KRS 13B.010 through 13B.170 and this administrative regulation shall govern all hearings conducted pursuant to KRS 351.1041(1)(a) and KRS 351.025(5).

Section 2. Practice Before the Commission.

(1) The hearing shall be adversarial and presided over by a hearing officer assigned by the commission, which may include a member of the commission or an independent hearing officer, who shall conduct the hearing in accordance with KRS 13B.050 to 13B.130. If a complaint is filed by the Office of Mine Safety and Licensing, the charges and evidence against the respondent shall be filed by an attorney from the Natural Resources Legal Division of the Office of Legal Services, Environmental and Public Protection Cabinet. If a petition of appeal is filed by an individual or licensee, an attorney for the Natural Resources Legal Division of the Office of Legal Services shall represent the Office of Mine Safety and Licensing.

(2) An individual may file a petition of appeal or a response to a complaint pro se. In accordance with S.C.R. 3.020, all other petitioners or respondents shall be represented by an attorney admitted to practice law in the Commonwealth of Kentucky.

(3) Entry of Appearance. A representative of a party shall enter an appearance in a proceeding under this administrative regulation by:

- (a) Signing the first document filed with the commission on behalf of a party;
- (b) Filing a written entry of appearance with the commission; or
- (c) With the permission of the hearing officer, orally entering an appearance in open hearing.

(4) Withdrawal of appearance. A representative desiring to withdraw his appearance shall file a motion with the commission. The motion to withdraw may, in the discretion of the hearing officer, be denied if necessary to avoid undue delay or prejudice to the rights of a party.

Section 3. Parties, Intervenor, and Amici Curiae.

(1) Party status. For the purposes of KRS 13B.140(1), the agency named as a party for an appeal of a final disposition from the Mine Safety Review Commission is the Office of Mine Safety and Licensing.

(2) Intervention. The procedure for intervention shall be governed by the provisions of KRS 13B.060. In denying a motion to intervene, the hearing officer may permit the movant to participate in the proceeding as amicus curiae.

(3) Participation as amicus curiae. A person may move to participate as amicus curiae in a proceeding before the commission. Participation as amicus curiae shall not be a matter of right, but of the sound discretion of the hearing officer. A motion for participation as amicus curiae shall set forth the interest of the movant and show that granting the motion will not unduly delay or prejudice the adjudication of the issues. If the hearing officer permits amicus curiae participation, his order shall specify the schedule for filing and replying to the amicus curiae memorandum, brief, or other pleading. The movant may attach its memorandum, brief, or other pleading to its motion for participation as amicus curiae.

Section 4. Commencement of Action or Petition of Appeal. (1) An action shall be instituted by the Office of Mine Safety and Licensing by filing with the commission a verified complaint which shall contain the following information:

- (a) The name, address, and license number, or certification identification of the alleged violator;
- (b) If the alleged violator is a corporation, the address and license number of the corporation and the name and address of the process agent;
- (c) The section of the statutes or administrative regulations alleged to have been violated and the minimum and maximum penalties provided for the violation;

(d) A statement of the factual basis for the department's action and a statement of issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and arguments;

(e) The history of the alleged violator's previously-adjudicated violations before the commission or its predecessor; and

(f) Any supporting documents addressed in the statement.

(2)(a) The following individuals or licensed facility may file a petition for review of the suspension issued, certification denied, application rejected or denied, or penalty assessed:

1. Any individual whose certification issued pursuant to KRS 351.120(1) has been suspended by the Commissioner of the Department for Natural Resources pursuant to KRS 351.120(12) for violation of drug or alcohol-free status or refusal to submit to a drug or alcohol test as authorized by statute;

2. Any applicant for certification as a new miner or initial applicant for all other job certifications authorized by statute who is denied certification by the Office of Mine Safety and Licensing due to the results of drug and alcohol testing pursuant to KRS 351.184;

3. Any licensee or license applicant whose application for certification of a drug-free workplace program has been rejected or denied pursuant to 805 KAR 11:010 or 805 KAR 11:020; or

4. Any licensed facility against whom penalties have been assessed by the Commissioner of the Department for Natural Resources pursuant to KRS 351.070(15).

(b)1. The petition of appeal shall be filed within thirty (30) days of service of the notice of suspension by the Commissioner of the Department for Natural Resources, the notice of results of testing resulting in denial of certification by the Office of Mine Safety and Licensing, the notification of rejection or denial of the application for certification of a drug-free work program by the Office of Mine Safety and Licensing, or the notice of assessment of penalties by the Commissioner of the Department for Natural Resources. 2. The petition of appeal shall include:

a. A statement of the law and facts in issue in regard to the suspension or denial of certification, rejection or denial of the application, or assessment of penalties; and

b. A statement of the petitioner's position as to the law and facts and a recitation of the relief sought by the petitioner.

(3)(a) For any person seeking appeal from (2) above or any other authorized appeal of action by the Office of Mine Safety and Licensing, the complaint or petition of appeal shall be filed with the Mine Safety Review Commission, 132 Brighton Park Boulevard, Frankfort, Kentucky. At the time of filing, the complaint or petition of appeal shall be assigned a case number, which shall be used in the future proceedings of the matter.

(b) Timely filing. A petition of appeal shall be deemed timely filed when it is received by the commission within the time specified for filing except that a petition of appeal shall be deemed timely filed if it has been transmitted by United States registered or certified mail, or by other recognized mail carriers, with the date the mail carrier received the petition from the sender noted by the mail carrier on the outside of the container or envelope used for transmitting the petition, within the time allowed for filing.

Section 5. Probable Cause Hearing; Notice of Hearing.

(1) Upon receipt of a verified complaint filed by the Office of Mine Safety and Licensing, the commission shall place the complaint on its agenda for a probable cause hearing to be reviewed at the next regularly-scheduled meeting of the commission, or as soon as practicable.

(a) The probable cause hearing shall not be adversarial in nature. Testimonial evidence shall not be taken. The determination of probable cause shall be based upon the content of the verified complaint alone.

(b) If the commission finds that probable cause exists, it shall issue an order in accordance with KRS 351.194(3).

(c) The commission shall dismiss a complaint if it does not find probable cause that a violation has occurred. The dismissal shall be without prejudice. The commission shall notify the Commissioner and attorney of record for the Natural Resources Legal Division of the Office of Legal Services of its decision.

(2) If an order setting the matter for hearing is issued by the commission, it shall mail a notice of hearing to the following:

(a) The Commissioner of the Department for Natural Resources;

(b) The attorney of record for the Natural Resources Legal Division of the Office of Legal Services; and

(c) The respondent named in the verified complaint at the address shown in the complaint.

(3) The notice of hearing shall be sent by certified mail, return receipt requested, in compliance with KRS 13B.050.

Section 6. Notice of Hearing Regarding Petition of Appeal.

(1) Upon receipt of a petition of appeal, the commission shall set the matter for hearing unless the petition is deemed by the commission to be:

(a) Not well grounded in fact or warranted by existing law or a good faith argument for the extension of same;

- (b) Filed for an improper purpose; or
- (c) Frivolous.
- (2) The commission shall mail a notice of hearing to the following:
 - (a) The petitioner or counsel for the petitioner, if the petitioner is represented by counsel; and
 - (b) The General Counsel of the Natural Resources Legal Division of the Office of Legal Services.
- (3) The notice of hearing shall be sent by mail, return receipt requested, in compliance with KRS 13B.050.

Section 7. Answer of the Respondent.

(1) The respondent shall file a response to the complaint with the commission, with service on the attorney of record for the Natural Resources Legal Division of the Office of Legal Services, within twenty (20) days of receiving the notice of hearing. The response shall:

- (a) Set forth the defense to the complaint;
- (b) State mitigating circumstances; and
- (c) 1. Admit or deny each assertion in the complaint; or

2. If appropriate, state that the respondent is without knowledge or information sufficient to form a belief as to the truth of an assertion. This statement shall be treated as a denial.

(2) The Natural Resources Legal Division of the Office of Legal Services shall file a response to a petition for appeal with the commission, with service on the petitioner, within twenty (20) days of service of the notice of hearing. The response shall:

- (a) Set forth the defenses to the petition; and
- (b) 1. Admit or deny each factual assertion in the petition; or

2. If appropriate, state that the respondent to the petition of appeal is without knowledge or information sufficient to form a belief as to the truth of the assertion. This statement shall be treated as a denial.

Section 8. General Requirements for Pleadings and Other Documents.

(1) Where to file. The original copy of all documents shall be filed with the commission. Documents filed with the commission shall be addressed to the general counsel and mailed or delivered to the Mine Safety Review Commission, 132 Brighton Park Blvd., Frankfort, Kentucky 40601. Copies shall be sent to all parties in a case, and to the hearing officer assigned to the case.

(a) The filing of complaints, petitions of appeal, or other initiating documents shall be by personal delivery, including courier service, or by registered or certified mail, return receipt requested.

(b) Subsequent documents filed with the commission may be filed by first class mail, express mail, facsimile transmission, or personal delivery. Express mail includes delivery by a third-party commercial carrier.

(c) Filing by personal delivery, mail, or facsimile transmission, is effective upon receipt, except as otherwise permitted in Section 4(3)(a) of this administrative regulation.

(d) A document filed by facsimile transmission shall be placed in the United States mail on the same day as transmission.

(2) Required information.

(a) Documents shall be legible and shall clearly identify the filing party by name on the cover page.

(b) Documents filed with the commission shall be accompanied by a statement setting forth the date and manner of service.

(c) Documents shall include the assigned docket number, page numbers, and the filing person's address and telephone number. Written notice of a change in the address or telephone number shall be given promptly to the commission, the hearing officer, and all other parties.

(3) Number of copies. The original document and four (4) copies shall be filed with the commission.

Section 9. Computation of Time. In computing a period of time prescribed by this administrative regulation, the day from which the designated period begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or state holiday, in which event the period runs until the end of the next business day.

Section 10. Extensions of Time.

(1) The time for filing or serving a document may be extended for good cause shown. A motion requesting an extension of time shall be received no later than three (3) days prior to the expiration of the time allowed for filing or serving the document.

(2) An extension of time may be granted even though the request was filed after the designated time for filing has expired if:

- (a) Exigent circumstances exist; and

(b) The requesting party shows, in writing, the reason for the party's failure to make the request before the prescribed time expired.

Section 11. Motions.

(1) An application for an order shall be by motion which, unless made during a hearing or a prehearing conference, shall be made in writing and shall set forth the relief or order sought.

(2) A party opposing a written motion shall file a statement in opposition within ten (10) calendar days after service upon the party. Unless otherwise ordered, oral argument on motions shall not be heard.

Section 12. Withdrawal of a Pleading. A party may withdraw a pleading at any stage of a proceeding with the approval of the commission or a hearing officer.

Section 13. Consolidation of Proceedings. The commission or a hearing officer may, upon their own or a party's motion, order the consolidation of proceedings that involve similar issues.

Section 14. Hearing Sites. Each case shall be assigned a hearing site by order of the Hearing Officer giving due regard to:

- (1) The convenience and necessity of the parties or their representatives and witnesses;
- (2) The availability of suitable hearing facilities; and
- (3) Other relevant factors.

Section 15. Prehearing Conferences. Prehearing conferences shall be conducted in accordance with KRS 13B.070.

Section 16. Powers of Hearing Officers. A hearing officer is empowered to act in accordance with the provisions of KRS Chapter 13B.

Section 17. Discovery. Discovery shall be conducted in accordance with KRS 13B.080(3).

Section 18. Failure to Cooperate in Discovery. Upon the failure of any person, including a party, to respond to a discovery request, or upon an objection to such a request, the party seeking discovery may file a motion with the hearing officer requesting an order compelling discovery pursuant to KRS 13B.080(3). For good cause shown the hearing officer may excuse an objecting party from complying with the request.

Section 19. Subpoenas.

(1) The commission and its hearing officers may issue subpoenas, on their own motion or on the oral or written application of a party, requiring the attendance of witnesses and the production of documents or physical evidence.

(2) A subpoena may be served by a person at least eighteen (18) years of age. A subpoena may also be served by registered or certified mail, return receipt requested, with risk of delivery on the serving party.

(3) A copy of the subpoena bearing a certificate of service shall be filed with the commission.

(4) A subpoena shall be enforced in accordance with KRS 13B.080(3).

(5) If a person fails to comply with an order to testify or with a subpoena issued by the commission, the commission may initiate proceedings for the enforcement of the subpoena pursuant to KRS 13B.080(3).

(6) The person requesting the subpoenas shall bear the cost of serving the subpoenas. The commission shall bear the cost of witnesses subpoenaed on its behalf.

Section 20. Continuance; Proceedings in Absentia. The commission shall not postpone a case which has been scheduled for hearing, absent good cause. A request for a continuance may be considered if communicated to the commission staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer.

Section 21. Settlement by Informal Proceedings.

(1) In accordance with KRS 13B.070(3), the commission, through counsel may, at any time during the action, enter into informal proceedings with the respondent for the purpose of appropriately dispensing with the matter.

(2) An agreed order of settlement shall be signed by the parties and filed with the commission for final decision.

(3) The commission may employ mediation as a method of resolving the matter informally.

Section 22. Rules of Evidence.

(1) Receipt of evidence shall be governed by the provisions of KRS 351.194(3) and 13B.090.

(2) Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the commission is satisfied of its genuineness and accuracy.

(3) A tangible item may be received into evidence without the necessity of establishing a technical legal chain of custody if the board is satisfied that the item is:

(a) What it is represented to be; and

(b) In substantially the same condition as it was at the time of the events under consideration.

(4) The commission shall exclude evidence it considers to be unreliable, incompetent, irrelevant, immaterial, or unduly repetitious.

Section 23. Retention of Exhibits. Retention of exhibits shall be in accordance with KRS 13B.130. The commission or the hearing officer may permit the withdrawal of original exhibits:

(1) Prior to the conclusion of the hearing;

(2) Upon request and after notice to the parties; and

(3) If true copies are substituted, if practical, for the originals.

Section 24. Proposed findings, conclusions, and orders shall be made in accordance with KRS 13B.090.

Section 25. The commission shall make a decision that constitutes the final disposition of the proceedings in accordance with KRS 13B.120. If a decision is announced orally it shall be reduced to writing. An order by the commission approving a settlement proposal is a final decision of the commission.

Section 26. Ex Parte Communications. Prohibited ex parte communications shall be in accordance with KRS 13B.100. (28 Ky.R. 1949; Am. 2377; 2589; eff. 6-14-2002; 33 Ky.R. 566; 1541; eff. 12-7-06.)

825 KAR 1:030. Penalties for subsequent violations; criteria for modification of civil penalties and fines.

RELATES TO: KRS 351.025(1), (2), 351.194

STATUTORY AUTHORITY: KRS 351.025(1)(a), (c), 351.194(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.025(1)(a) requires the Mine Safety Review Commission to establish a maximum penalty for certified miners who commit subsequent offenses. KRS 351.025(1)(c) requires the Mine Safety Review Commission to establish a maximum penalty for noncertified personnel who commit subsequent offenses. KRS 351.194(6) authorizes the Mine Safety Review Commission to establish criteria that may be used to modify the civil penalties promulgated by the Kentucky Department of Mines and Minerals. This administrative regulation establishes the maximum penalties for certified and noncertified personnel who commit subsequent offenses. In addition, this administrative regulation establishes the criteria the commissioners may use to modify the penalties set forth in 805 KAR 8:030, 805 KAR 8:040, 805 KAR 8:050, and 805 KAR 8:060.

Section 1. Definitions.

(1) "Certified miner" or "certified personnel" means a miner, mine foreman, assistant mine foreman, electrician, shotfirer, underground or surface mining instructor, or mine emergency technician (MET).

(2) "Noncertified personnel" means any person in or around a coal mine who has not procured a certificate from the Kentucky Department of Mines and Minerals to perform particular work duties.

(3) "Subsequent offense" means any intentional violation of, or order to violate, a mine safety law which places a miner in imminent danger of serious injury or death, as adjudicated by the Kentucky Mine Safety Review Commission, and which occurs after the individual's or entity's first offense.

Section 2. Certified Miners. The maximum penalty to be imposed upon a certified miner for subsequent offenses shall be revocation.

Section 3. Noncertified Personnel. The maximum penalty to be imposed upon noncertified personnel for subsequent offenses shall be a civil monetary fine against the noncertified person equivalent to the value of the wages received by that person, not to exceed sixty (60) working days.

Section 4. Modification of Civil Penalties and Fines. The maximum penalty for offenses established by 805 KAR 8:030, 805 KAR 8:040, 805 KAR 8:050, and 805 KAR 8:060, may be modified on a case-by-case basis using the following criteria:

- (1) Cooperation with investigators;
- (2) The severity of the harm done, such as whether the offense resulted in:
 - (a) Death;
 - (b) Serious physical injury; or
 - (c) The placement of an individual in imminent harm;
- (3) Acceptance of responsibility for actions;
- (4) History of violations;
- (5) Adjudicated violations in other states;
- (6) Mitigating circumstances; and
- (7) Aggravating circumstances. (29 Ky.R. 201; Am. 1272; eff. 11-12-02.)